

UTAH RADIATION CONTROL BOARD

MINUTES OF THE UTAH RADIATION CONTROL BOARD MEETING, January 4, 2002, Department of Environmental Quality (Bldg #2), 168 North 1950 West, Conference Room 101, Salt Lake City, Utah.

BOARD MEMBERS PRESENT

Stephen T. Nelson, Ph.D., Chairman
Gary L. Edwards, M.S., Vice Chairman
William J. Sinclair, M.S.E.H., Executive Secretary
Thomas K. Chism, M.S.
Cathleen C. Gilbert, C.P.A., Esq
Teryl J. Hunsaker, Commissioner
Karen S. Langley, M.S.
Dianne R. Nielson, Ph.D.
Gregory G. Oman, D.D.S., B.S.
Barbara S. Reid, M.D.
Kent J. Bradford, P.G.
Rod O. Julander, Ph.D.

PUBLIC

Cindy King, Utah Chapter of the Sierra Club
Mark Ledoux, Envirocare of Utah, Inc.
Kathe Luizzi
Patrick Mulane
Sean McCandless, Envirocare of Utah, Inc.
Michelle Rehmann, IUC (USA)
Patrick Thomas, Adamson & Associates

BOARD MEMBERS ABSENT/EXCUSED

None

DRC STAFF/OTHERS PRESENT

Dane Finerfrock
Craig Jones
Laura Lockhart, Attorney General's Office
Chris Morley, Attorney General's Office
Loren Morton
Fred Nelson, Attorney General's Office
Yoli Shropshire

PUBLIC

Kenneth Alkema, Envirocare of Utah, Inc.
Robert Baird, URS Corporation
Larry Bunkall, Parsons, Behle & Latimer
Claire Geddes, Utah Legislative Watch
Jason Groenewold, FAIR
Jim Holtkamp, LLGM
Jon Jensen, FAIR
Jay Vance, Envirocare of Utah, Inc.

GREETINGS/MEETING CALLED TO ORDER

The Utah Radiation Control Board convened in the DEQ Building #2, Room 101, 168 North 1950 West, in Salt Lake City, Utah. The meeting was called to order at 1:00 p.m. by Dr. Stephen T. Nelson, Chairman of the Board. Dr. Nelson welcomed all members and public attending the meeting. Dr. Nelson stated to those present, if they wished to address any items on the agenda to indicate it on the sheet as they signed in. Those desiring to comment would be given a chance to address their concerns on any agenda items to the Board.

I. I. APPROVAL OF MINUTES

a. Approval of December 7, 2001 Minutes (Board action item)

Gary Edwards, made a motion to approve the minutes of December 7, 2001, as amended. The motion was seconded by Karen Langley.

CARRIED AND APPROVED UNANIMOUSLY

II. RULES

No items

III. RADIOACTIVE MATERIALS LICENSING/INSPECTION

a. Annual Enforcement Summary

Bill Sinclair referred Board members to the handout in the packet which provided the annual enforcement summary. He indicated that the summary covered those enforcement actions which resulted in a civil penalty for the period, January 1, 2001 to December 31, 2001. The enforcement actions summarized had all been discussed in previous Radiation Control Board meetings.

IV. X-RAY REGISTRATION/INSPECTION

No items

V. RADIOACTIVE WASTE DISPOSAL

- a. Joint Motion for Partial Stay of Proceedings of December 20, 2001 - presentation by Fred Nelson, Utah Attorney General's Office
- b. Notification of Further Proceedings on appeal of final Executive Secretary Decision on Envirocare's license amendment application to accept containerized Class A low-level radioactive waste in the existing cell of November 19, 2001 - presentation by Fred Nelson, Utah Attorney General's Office
- c. Determination on motion to disqualify - presentation by Fred Nelson, Utah Attorney General's Office
- d. Determination of petitioner's intervention requests regarding appeals of final Executive Secretary decision on Envirocare's application to accept containerized Class A, B, and C

low-level radioactive waste of July 9, 2001 - presentation by Fred Nelson, Utah Attorney General's Office

A court reporter provided the following transcription regarding agenda items Va. -Vd.

“ Utah Department of Environmental Quality
Before the Utah Radiation Control Board
Public Hearing

--oOo--

Be it remembered that on the 4th day of January, 2002, a hearing was held in the above-entitled matter and was taken before Dawn M. Davis, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, commencing at the hour of 1:00 p.m. of said day at 168 North 1950 West, Salt Lake City, Utah.

--oOo--

A P P E A R A N C E S

Representing the Radiation Control Board:

Teryl W. Hunsaker
Rod O. Julander
Thomas K. Chism
Kent J. Bradford
Barbara S. Reid
Dianne R. Nielson
William J. Sinclair
Stephen T. Nelson
Gary L. Edwards
Cathleen C. Gilbert
Gregory G. Oman
Karen S. Langley

Representing the Utah Attorney General's Office.
Fred Nelson

P R O C E E D I N G S

Mr. Nelson: Let's move on to Roman numeral number five. And this is the more formal part of our meeting and the part which has caused us to meet an hour earlier in anticipation that the meeting might run long.

We have a court reporter who is here and so all parties please be aware that she is here and cooperate and if you are interrupted in stating your name and helping with spelling and things.

Mr. Sinclair: I am going to excuse myself from the board, Mr. Chairman.

Mr. Nelson: Okay. We'll turn the time over to Fred Nelson to present these.

Mr. Fred Nelson: We have two preliminary matters that we need to deal with before we get to the issues that will require presentations by the parties.

The first is a joint motion for partial stay of proceedings. As you'll recall, the Air Force and the Rocky Mountain Low-level Radioactive Waste Board came with a request that you stay any proceedings for the moment because they were attempting to resolve the issues that they had raised in the proceeding.

They are still in active negotiations on that and would like a further extension of time. They would like the written responses to be moved to February 21st, 2002. Parties would have till March 21st, 2002 to propose supplements to the prehearing administrative record, and at that point the board would move forward on the issues.

All parties and all potential parties to the proceedings have agreed that this would be appropriate and so we would ask the board approval of that extension of the stay.

Mr. Julander: So move.

Mr. Nelson: Okay. We have a motion by Rod Julander to approve the extension.

Mr. Hunsaker: Second.

Mr. Nelson: Seconded by Teryl Hunsaker.

Any discussion?

Okay. Why don't we ask -- just to be careful, we'll go around the table to take votes on this.

Would you indicate your vote, Teryl?

Mr. Hunsaker: Aye.

Mr. Nelson: Rod.

Mr. Julander: Aye.

Mr. Nelson: Tom.

Mr. Chism: Aye.

Mr. Nelson: Kent.

Mr. Bradford: Aye.

Mr. Nelson: Barbara.

Ms. Reid: Aye.

Mr. Nelson: Dianne.

Ms. Nielson: Aye.

Mr. Nelson: Aye.

Gary.

Mr. Edwards: Aye.

Mr. Nelson: Cathleen.

Ms. Gilbert: Aye.

Mr. Nelson: Greg.

Mr. Oman: Aye.

Mr. Nelson: And Karen.

Ms. Langley: Aye.

Mr. Nelson: Okay. Just to be sure. It was unanimous. Okay. Thank you.

Mr. Fred Nelson: The second item is not part of the appeal on the licensure for the B and C waste, it is a separate petition to intervene, challenging the License Amendment Number 12 to the

existing Envirocare license allowing for the disposal of containerized A waste.

Under the Administrative Procedures Act, on receiving these petitions, as you are now aware, we -- the board is to issue a notification of further proceedings, and I distributed a draft of that.

The proposal would be to allow the Executive Secretary in Envirocare until January 18th to submit any response to the intervention request.

A reply by FAIR, which is the entity that petitioned for review, would be filed by January 25th, 2002, and then the matter would be presented for review of that intervention request at the February meeting, or as soon as the board can hear it thereafter.

The prehearing administrative record would be filed by the staff by March 15th, 2002. Excuse me, February 15th, 2002, and any supplements to that would be filed by March 15th, 2002.

It would designate the chair of the board as the presiding officer, similar to what we did with the B and C waste, and that board actions and responses to pleadings would be filed in accordance with the Procedures Act.

It's similar to the notification that the board issued before and we would ask the board to approve that.

I don't know whether there are any objections by the parties. Is the Executive Secretary -- counsel for the Executive Secretary okay with that schedule?

Ms. Lockhart: I reviewed it earlier and I was okay.

You said something that I don't remember from that, and that is that the responses would be due in accordance with the Administrative Procedures Act.

Mr. Fred Nelson: No. Excuse me. No, not the responses, just the proceedings from here out.

Ms. Lockhart: All right. When are the responses due, then?

Mr. Fred Nelson: The responses would be due March 15, 2002.

Ms. Lockhart: That would be fine.

Mr. Groenewold: Clarification. Responses for the prehearing record?

Ms. Lockhart: Responses --

Mr. Fred Nelson: To your petition.

Ms. Lockhart: Petition.

Mr. Fred Nelson: Envirocare and the Executive Secretary would need to respond by March 15th. For the intervention they would have to respond by January 18th.

Mr. Groenewold: Okay.

Mr. Fred Nelson: Did Envirocare have any comments or concerns with that?

Mr. Holtkamp: We are fine.

Mr. Fred Nelson: Jason, did FAIR have any issues?

Mr. Groenewold: Yeah. Just if -- under the response on the intervention, it allows for one week after the Executive Secretary of Envirocare submit any responses to that for us to follow up with any addendums and I was wondering if that could be extended, you know, up to 30 days, which would be in about in accordance with when the prehearing record would be established.

Mr. Fred Nelson: The question for the board at that point would be when you want to hear the intervention request. If you want to hear it before -- at the February meeting, you would need the replies due by January 25th and mailed to the board. If you want to defer that until later then, there wouldn't be a conflict in schedule.

Mr. Nelson: Dianne.

Ms. Nielson: Maybe this is to you, Fred, and to Jason.

I am interested in understanding the reason for the additional extension. Normally that week as a response to filings would, I think, be a normal schedule that we would follow.

Mr. Fred Nelson: It is.

Ms. Nielson: And I am just wondering what the basis for additional time would be.

Mr. Groenewold: Given the length of time that was required for preparing on standing for this particular proceeding that we'll be getting into next, you know, it did take some time to prepare that, to -- just kind of going on based on what we experienced last time would be the reason for the request.

Mr. Nelson: It seems to me -- I guess the question I have is, given the parallel nature of these -- these two processes, they are similar nature and similar issues involved, I am wondering if there is that much of a learning curve that you need to go through for the second -- the second petition, if it justifies 30 days.

Mr. Groenewold: Well, it very well could be that -- based on the outcome of today's proceeding that it wouldn't be necessary. I am just thinking if that were mailed on the 18th -- I don't have my calendar to know if that's, you know...

Ms. Nielson: The 18th is a Friday.

Mr. Groenewold: A Friday. So if that were mailed on Friday and we didn't receive that until, you know, potentially Monday or Tuesday of the following week, then that gives us, you know, three or four days to respond.

Mr. Nelson: Yes.

Ms. Nielson: Mr. Chairman, I would also be interested in understanding what the other -- whether other parties would have a concern with the additional delay or additional time.

Mr. Nelson: Does the Executive Secretary of Envirocare have an objection to 30 over 7 days?

Ms. Lockhart: We have no objection.

Mr. Holtkamp: We have no objection.

Mr. Nelson: Okay. So there apparently is no objection.

Any further discussion?

Mr. Julander: We need a motion.

Mr. Fred Nelson: If that extension is granted, the other dates in the notification should be moved accordingly to match up with the extension.

Mr. Nelson: Okay.

With that understanding, does anyone want to make a motion to that effect?

Mr. Julander: So move.

Mr. Nelson: Moved by Rod Julander.

Do we have a second?

Mr. Chism: I'll second.

Mr. Nelson: Seconded by Tom Chism.

Any discussion on the motion?

Yes, Karen.

Ms. Langley: I am just -- I just want to make sure we understand where the rest of the calendar goes.

Mr. Nelson: Okay. Maybe we should make sure we clarify that then.

Mr. Fred Nelson: The -- at that point the prehearing administrative record would be due March 15th by the staff and then the parties would have until April 15th to propose supplements to that. The responses would be due April 15th.

Mr. Nelson: Any further question or discussion on that?

Mr. Chism: Then the response from FAIR would be by February 18th then?

Mr. Fred Nelson: And the response by FAIR would be February 18th.

Mr. Chism: So we expect to secure this thing in the May --

Mr. Fred Nelson: You would hear the petition to intervene question the first part of April -- or, no, first part of March, first part of March.

Mr. Chism: The 18th.

Mr. Fred Nelson: right.

Mr. Nelson: Okay.
 Mr. Groenewold: Thank you.
 Mr. Nelson: Well, any further discussion?
 Well, let's take a vote then. Let's go around.
 Mr. Hunsaker: Aye.
 Mr. Nelson: Rod.
 Mr. Julander: Aye.
 Mr. Nelson: Tom.
 Mr. Chism: Aye.
 Mr. Nelson: Kent.
 Mr. Bradford: Aye.
 Mr. Nelson: Barbara.
 Ms. Reid: Aye.
 Mr. Nelson: Dianne.
 Ms. Nielson: Aye.
 Mr. Nelson: Aye.
 Gary.
 Mr. Edwards: Aye.
 Mr. Nelson: Cathleen.
 Ms. Gilbert: Aye.
 Mr. Nelson: Greg.
 Mr. Oman: Aye.
 Mr. Nelson: Karen.
 Ms. Langley: Aye.
 Mr. Nelson: That's passed unanimously, then, as modified.
 Mr. Holtkamp: Mr. Chairman?
 Mr. Nelson: Yes.
 Mr. Holtkamp: If I may -- I mentioned this to Fred a little while ago.
 My name is James Holtkamp, counsel for Envirocare.

I would like to make a suggestion before we proceed with the next two matters, and that is that the order be reversed, that the board hear the intervention petition first and the disqualification motion second.

And the reason for that is that the motion to disqualify made by FAIR was made by FAIR before their party status was determined.

We think it would be appropriate, if Mr. Hunsaker agreed, if the intervention motion were heard first and he did not participate in that. And then if the board determined to allow FAIR as a party then we could move to the disqualification motion. But if the board determined not to allow FAIR in, then there would be no need to move to the disqualification motion because they would not be a party. So we would like to make that request.

Mr. Nelson: Do you have any comment on that, Fred?

Mr. Fred Nelson: I think it's at the discretion of the board, provided that Mr. Hunsaker does not participate in the motion to intervene. If he is willing to recuse himself on that petition to intervene, those petitions to intervene, then it would be at the discretion of the board as to which order that they take.

Mr. Nelson: Okay.

Jason, do you have a comment on that?

Mr. Groenewold: Yeah.

For the record, my name is Jason Groenewold, which is g-r-o-e-n-e-w-o-l-d.

And I am the Director for FAIR and one of the representatives on the appeals committee. I guess what we are about to begin is a fairly lengthy process for reviewing the request for

agency review and request for agency action. And, therefore, it makes sense to take things in order, which would be, as we start to proceed down this path, obviously one of the things we want to ensure is due process. And this is going to be for the entire length of these proceedings, including the evidentiary portion, and so we would feel that it makes the most sense right now to go ahead and handle as the agenda has laid forth, the determination on the motion to disqualify and then get into the issues related to intervention.

Mr. Nelson: Okay. Any questions for Jason?

Just out of curiosity, Teryl, how do you feel about Mr. Holtkamp's suggestion?

Mr. Hunsaker: That's fine with me.

Mr. Nelson: That's fine with you. Okay.

Well, fellow board members, how do you feel about it?

Mr. Julander: I think that's the discretion of the chair.

Mr. Nelson: The discretion of the chair. Would you like to -- do you have a comment?

Ms. Geddes: Yes. My name is Claire Geddes, g-e-d-d-e-s, Utah Legislative Watch.

I have a concern with changing the order of that and I wonder why they would want to do that and why he would want to disqualify himself. Does that basically say that he's probably got a conflict there? I would think if he was willing to stand up right now and disqualify himself, he has already indicated that he has a conflict and that concerns me and it should be done before the other reverse process.

And that's all I have to say.

Mr. Nelson: Well, I would express the opinion that it's probably unwise to read anything into Mr. Hunsaker's willingness to recuse himself.

I don't see any particular reason for changing the order unless it's in the interest of time. Some time might be saved if standing, hypothetically speaking, were not granted to FAIR, but I don't have strong feelings one way or the other.

Dianne.

Ms. Nielson: Mr. Chairman, I would appreciate a little bit more feedback from either Miss Geddes or Mr. Groenewold about the proposal. It seems to me that part of the reason that we are having the disqualification motion before us is a concern on their part of -- about the commissioner's participation in these matters and it seems, on the first of those matters, he has resolved that issue by saying that he would be willing to remove himself from that. And I am taking that to be from the discussion and the vote and it seems -- so that seems to have addressed the issue and I wonder what the concern, then, would be with FAIR and others in the proceeding.

Mr. Groenewold: One that comes to mind right now is -- you know, certainly I can understand and appreciate some of the board may be feeling awkward about the motion to disqualify because, obviously, this is an issue related to a colleague that you work with.

However, I don't think holding that issue out there to be decided upon later really changes whether or not it needs to be decided, especially because it could potentially influence how someone may or may not vote on the petition to intervention if there was an awkward feeling about needing to get to that issue, the disqualification.

And it just seems to us that that motion has been filed, it's been made, that regardless of the decision on the petition to intervene, it's not going to become a moot point and, therefore, we should just go ahead and decide that, get that out of the way. I don't imagine that it will take a lot of time, and especially since consideration was given for both of these issues today, moving the board meeting up an hour. You know, I feel like that's something that should be decided regardless and we might as well do it up front as we are engaging in these proceedings.

Does that answer the question?

Ms. Nielson: It does. Maybe I could ask a follow-up question, though.

The board has the ability to hear arguments and delay making a decision. Would it matter to you if we heard the arguments but delayed making a decision on the petition to disqualify as

opposed to changing the order?

Mr. Groenewold: You mean go ahead and hear arguments on the motion to disqualify and then hear arguments on the petition to intervene, make a decision on that, and then --

Ms. Nielson: Make a decision on the petition to intervene, recognizing that Mr. Hunsaker would not be participating in that. In other words, is the issue deciding the motion to disqualify or is the issue being able to provide the information to the board?

Mr. Groenewold: I think either way. You know, we are not going to make a big deal of this. Obviously it's at the board's discretion, but I guess our feeling is it's there before the board properly. We would just as soon go ahead and -- logically it makes sense to deal with that issue first, before the decision on intervention was granted, obviously because we want to ensure due process.

If there is consideration to go ahead and make that decision without impacting whether or not we are being fairly heard before the board, you know, that's up to the board to decide. I guess, for us, we are prepared to go in that order, continue to be so and that's obviously in your court.

Ms. Nielson: Thank you. I appreciate that.

Mr. Nelson: Yes, Miss Geddes.

Ms. Geddes: I have a concern where we are trying to decide this prior to the vote, whether this will influence anyone on the board of how they vote. Apparently there must be a reason people are uncomfortable voting on this first, and I would hate to see this be a decision to decide to bar participation if -- and that will be a question in our minds if that happens, is this the way to avoid going into a disqualification or even hearing this issue. And I think it's extremely important that we go on the process that we had and I see no reason for changing it.

Mr. Nelson: Dianne.

Ms. Nielson: I guess, Mr. Chairman, just a statement.

The board's responding to a request that was made by counsel and I think, just to clarify the record, that is, in fact, what the board is doing, and I don't think any of the board members have indicated in this proceeding today a hesitancy to address those questions, and so I'm a little bit concerned that the record might reflect the expectation that we are hesitant about addressing that because I don't think that's been stated by any board member. What we are doing right now is responding to a request that was made by counsel.

Mr. Nelson: Well, I am being awful wishy-washy today. Would anyone like to air this further or like to make a motion on how we handle this?

Cathleen.

Ms. Gilbert: I'll make a motion. And I have listened carefully to both sides and I -- and I think Dianne's suggestion that for due process that we hear the motion to disqualify but we hold it in abeyance and not vote so that if there is something that one side or the other thinks is important for us to know, we've heard it. And then we hear the intervention request petition and vote on that. And if it's still necessary to vote on the former, that we take a vote at that time.

And I'd also add that by Teryl recusing himself that that's no admission of guilt on his part.

Mr. Nelson: Okay. I would certainly agree with that.

Do we have a second on that?

Mr. Edwards: Second.

Mr. Nelson: Okay, seconded by Gary Edwards.

Some discussion? I certainly have a question.

Hypothetically speaking, if -- if, for the sake of argument, the board were to vote to disqualify Mr. Hunsaker, would that disqualify him just from voting on FAIR's request for intervention or would also -- the standing issue with FAIR -- would it also apply to the Sierra Club?

Mr. Fred Nelson: My understanding is the motion that's been made by FAIR is to the whole proceeding.

Mr. Nelson: To the whole proceeding.

Mr. Fred Nelson: Right.

Mr. Nelson: So I want to make sure that we have the understanding of what that would involve.

Mr. Fred Nelson: Yeah.

Mr. Nelson: Cindy, do you have a comment on this?

Ms. King: I just have a question that is not clear.

I am Cindy King with the Utah Chapter of the Sierra Club.

It's not clear to me that when -- whether or not there is a disqualification of a member, does that mean that the member cannot participate in discussions that would lead to a vote one way or another or does that mean that they have to completely recuse themselves from any discussions in the issue at hand and that hasn't been -- it's not clear what that means that the member would have to do, regardless of who the member might be.

Mr. Nelson: I don't know the answer to that.

Do you have an answer to that?

Mr. Fred Nelson: With respect to this matter, if the motion to disqualify is granted, Mr. Hunsaker should not participate in the discussions or the vote.

Mr. Nelson: Okay. All right.

Well, so with those two clarifications, that it would be to the entire proceeding and -- as well as both voting and participation and discussion, is there any further discussion on the motion?

If not, then why don't we take a vote. Now, the question is of Mr. Hunsaker. Teryl. Are you vote -- yea or nay or abstain on the motion?

Mr. Hunsaker: Explain the motion again so it's clear to the body.

Mr. Nelson: Okay. I'll try.

The motion, as I understand it, is that the arguments for and against disqualification will be heard. It is with the understanding that the vote will be taken, if necessary -- the vote will be taken, if necessary, after the matter of standing has been determined. And it is also with the understanding that if the disqualification, if it were granted, would be for the entire proceeding and would include not only voting but discussion by yourself on the issue.

Mr. Hunsaker: This is on item number c?

Mr. Nelson: Yeah, that's the...

Mr. Hunsaker: Determination of motion to disqualify. That's --

Mr. Chism: C and d.

Mr. Nelson: Yeah, it would be for the entire administrative process for the Class B and C licenses is my understanding.

Have I captured that?

Mr. Fred Nelson: I believe that's the motion. It's just a procedural motion as to the order that things are going to be heard.

Ms. Nielson: Mr. Chairman, if I could clarify.

It's my understanding, then, that Mr. Hunsaker would not participate in the following hearing on the intervention. In other words, we would do the disqualification hearing and then we would move to the consideration of the intervention and that's what was offered initially by Mr. Holtkamp and confirmed by Commissioner Hunsaker, that Commissioner Hunsaker would not participate in the request to intervene and then after the request to intervene was determined by the board we would make the decision that you indicated.

Mr. Nelson: As with the --

Mr. Bradford: Was that your intent in that motion?

Ms. Gilbert: To hold the first in abeyance, the motion to disqualify.

Mr. Bradford: But as far as the commissioner's participation in --

Mr. Nelson: In standing.

Mr. Bradford: Yeah.

Ms. Gilbert: Yes.

Mr. Bradford: Okay.

Mr. Hunsaker: I am agreeable to that.

Mr. Nelson: Okay. So the answer is yes.

Mr. Hunsaker: To whatever your question was.

Mr. Nelson: If everybody is clear, shall we proceed around?

Rod, are you clear?

Mr. Julander: Yes.

Mr. Nelson: Okay. So your vote is?

Mr. Julander: Yes, I think.

Mr. Nelson: Okay, Tom.

Mr. Chism: Yes.

Mr. Nelson: Kent.

Mr. Bradford: Yes.

Mr. Nelson: Barbara.

Ms. Reid: Yes.

Mr. Nelson: Dianne.

Ms. Nielson: Yes.

Mr. Nelson: Yes.

Gary.

Mr. Edwards: Yes.

Mr. Nelson: Cathleen.

Ms. Gilbert: Yes.

Mr. Nelson: Greg.

Mr. Oman: Yes.

Mr. Nelson: Karen.

Ms. Langley: Yes.

Mr. Nelson: Okay. That is how we will proceed, then. Let's hear the arguments for disqualification.

Mr. Fred Nelson: Let me just summarize the pleadings to this point on this motion.

The board received a motion to disqualify from FAIR. You should also have in your packet a memorandum submitted by the Executive Secretary that discusses the motion to disqualify.

You also have received in previous meetings two memorandums from myself considering -- or background memos on conflict of interest and bias.

To my knowledge, no other parties have submitted pleadings on this. Envirocare has not submitted pleadings, nor any of the other potential parties.

My recommendation is that you receive for -- initially hear from FAIR, have them present the motion and then ask for any response, if there is any, from the Executive Secretary from Envirocare and from Mr. Hunsaker.

Mr. Nelson: Okay. Let's proceed, then, in that order if there is no objection from the rest of the board.

Okay. Jason, or Miss Geddes then.

Ms. Geddes: I'll be presenting this motion.

My name is Claire Geddes, Utah Legislative Watch. And I wanted to hand out some papers here.

Should he be at the table while we are doing this, then, Teryl Hunsaker?

Mr. Nelson: Sure. There hasn't been any --

Mr. Fred Nelson: He has not been disqualified.

Ms. Geddes: Okay.

We have filed a petition to have Teryl Hunsaker disqualified. Several issues went into making this decision; probably the strongest would be number four in our petition, which is the due process of administrative law and -- stating that due process entitles the individual to administrative proceedings, to a fair hearing before an impartial tribunal. And it goes on to state that the tribunal's decision will significantly affect the municipality's budget.

Teryl Hunsaker sits as a county commissioner for a county which would benefit significantly from this proposal.

We have stated case law in Ward versus the City of Monroeville, 409 U.S. 57, 60, 1972.

To state our case, basically we feel like -- and Mr. Hunsaker's also made some pretty strong statements in the newspaper; one basically going to the -- talking about if they don't have this that -- who is going to feed Tooele, so we can see that he has a strong feeling on the need for having

these companies out there, especially Envirocare.

We also cited his campaign contributions although them, in themselves, would not be a -- considered a conflict of interest. I think they are a -- significant when you look at them in the body of evidence that we have in total. What you have here is some significant campaign contributions. In one year he received over a fourth of his campaign contributions from one company, which was Envirocare. That's very substantial. It's not what we would normally see in a race.

We also talked about him wearing a badge at the meeting. And I have seen it written that, you know, to be biased on a position on something would not consider that the person was -- he would be -- disqualification from being on a conflict of interest.

My concern is that it wasn't bias on an issue. He wore a badge which said, I supported Envirocare. Didn't say that I support this proposal or I support this stand on one of their statements, it basically just said he supported Envirocare.

When you write something on your chest and boldly go into a public meeting with that kind of a declaration for everyone to see, it's pretty obvious how you feel. The people that came to that hearing I'm sure didn't feel for one minute they were getting a fair hearing.

When -- you know, I worked at the Public Service Commission and, believe me, if a public service commissioner ever walked onto the stand to hear an issue and wore an I support Envirocare -- I mean, I support PacifiCorp or I support Questar badge, he would be drummed out. I mean, it just would never happen.

And I am even concerned that there was nothing said, that nobody -- the chairman was sitting at that meeting and when I talked to the administrative secretary about it, his statement was to me was, well, I didn't tell him to wear it. And I guess that was supposed to make me feel more reassured.

I find that concerning. I have never seen a board that ever walked into a meeting with a sticker on their chest stating that they already supported this company.

So I would say it's more than a bias on a position. He didn't say he had a position on any issue, he just said he supports the company. So that's been made very, very clear in his statements.

Also, I think -- the one handout I gave you was the resolution by the County Commission and I think this one just perfectly makes my point. The County Commission believes, and Teryl Hunsaker believes, that his position on this board is to represent Tooele County.

We would state that that is absolutely wrong. He is not put here to represent the economic development for Tooele County; he is here to represent the state on issues of radiation. So although that's what he was elected for out there, his appointment to this board was not for that position.

By having the commission pass this -- and I'm not saying he did it, but in the article I sent you around I also suggested that Envirocare had a hand in the writing of that, which I found quite remarkable. They basically are telling him that's what he is here for.

I mean, I was astounded when I saw this. I thought, you know, they just don't get it. This is the very issue we are trying to make, is that he is not independent and he is passing a resolution out there.

And they are saying, well, yeah, he is not (inaudible) supposed to be. Well, they are wrong. He is supposed to be.

So he is stating that he is there to represent them. They are stating that he is supposed to there to represent them. And it looks like there needs to be a little education here on what role he is playing on this board. It is not as a facilitator for Tooele; it as a board member of the state.

So I think by passing this resolution they have put it in bold writing exactly what their conflict is, that he is there to represent the economic development of Tooele County. And he stated that clear. And Tooele County has said that's what they have got him there for.

And we contend that is just dead wrong, that's not what he is there for. He is not there to be biased towards the company. And I think this particular resolution is -- absolutely flaunts the idea of him being independent and representing the state and not the county.

So, when you take into account all of these issues together, the fact that he will benefit -- you know, most elected officials find it probably one of the most important things they like to do, is tell you they have created a job. I mean, that's what they are there for. And to be able to say that he has been out furthering employment in Tooele is a -- really a feather in his cap, and rightly so. And if you are running as a county commissioner, there is nothing wrong with that.

But if you are sitting as an independent person on a board who is going to judge an issue that comes before you -- if you have even a fiduciary obligation and that company plays a significant role in your county, you have a strong bias. And if you took one of those alone, one of the other three, the campaign contributions or the statements in the newspaper, any of those, you might say, well, that doesn't prove that he has a bias.

When you put these together you have an overwhelming body of evidence of a conflict of interest. And even your own state statutes call for -- to declare if you even have -- if you believe there could be a conflict. Nothing was declared before the vote and so we have a real problem believing that Teryl Hunsaker could ever look at this without being biased. He has already shown behavior that proves he has a strong bias. He has a resolution here from his county stating he should be doing this. I mean, to me this is the most important piece of evidence towards his bias, is right here.

We don't elect people -- or we don't appoint people to this board to represent the economic development of a county. I mean, that's -- that runs counter to what he is supposed to be doing here.

So I would -- I would really urge you to look at this very carefully, because if the public doesn't believe they are getting a fair hearing -- if someone walks in with an "I support Envirocare" sticker on -- I mean, that's outrageous. And the fact that he got through the hearing without asking him to remove it or leaving tells me that there is some real lax behavior here. I can't even believe it went on.

In other boards I have sat on -- or I have watchdogged, that would never fly. The Public Service Commission wouldn't dream of doing something like that. And you are sitting as -- every bit as much as a judge as they are on these issues, so I would really stress how important this is, that if you want this to be an upheld decision that you make sure that you start out with people who are not biased.

Thank you.

Mr. Nelson: Questions or comments before we move on?

Dianne.

Ms. Nielson: Go ahead.

Mr. Nelson: Greg.

Mr. Oman: Correct me if I'm wrong, Mr. Chairman, but I think everybody on the board is -- a part of this board has been composed of different sectors. For example, I was appointed to represent the dental community, but with an independent eye for the good of the whole state. So I think all of us have certain biases because of what we do. Karen here has a bias in understanding because of what she does, Rod does because of what he does. We all have these biases.

Correct me if I'm wrong. Your concern really is not so much that we all see things from a different point of view, but in a way you feel, Claire, that Teryl advertised his biases too strongly.

Ms. Geddes: Not just advertised them. He doesn't consider that he is here representing the state. He believes he has been appointed to this board to represent Tooele County. That is not right. That's not what he was appointed for, although he is a county commissioner and the code, you know, asks for a county commissioner. That county commissioner doesn't mean that he is only going to represent that county. That wasn't the whole idea of him being on that board.

Mr. Oman: Another question, then, Steve, Dianne.

Terry's position on the board is the chair -- the county commissioner from the state of Utah holds that position, is that right, is that how the board is composed?

Mr. Nelson: That's my understanding.

Mr. Oman: Or does it have to be from Tooele County?

Ms. Nielson: No, it's from the state.

Let me clarify. I am not sure whether -- I think Bill has got the -- or someone has a copy of the statute.

Voice: It's a county-elected official.

Mr. Oman: It's a county-elected official. Doesn't have to be a commissioner necessarily. It could be any county-elected official, could be appointed as part of this board.

Do I understand that correctly, Fred?

Mr. Fred Nelson: Yes.

Mr. Oman: So a county clerk could be a member of the board or anybody could be a

member. He just happens to be a county commissioner. And historically county commissioners held the chair that he has been sitting in in the board. And that's not unusual. There has been no precedent for that.

Mr. Nelson: I think there has obviously been some rationale for which counties have been represented. I mean, it makes more sense in some regards than having somebody -- not to pick on Daggett County, but a county commissioner from Daggett County.

Ms. Geddes: But certainly in the public's mind, if you know that that person is going to benefit greatly -- I mean, it's quite obvious what you have got, especially when you have got a county commissioner that's been so bold as to let you know how he feels. I mean, he has aggressively went out and made statements both in the newspaper and other places where he has made it clear that he is there -- and I go back to this. This is what really bothers me, is that the people in Tooele thinks he's there to represent just Tooele County.

You know, I think this needs to be cleared up. You know, as a member from Salt Lake County I don't like that. I mean, this is a board that represents the state; it doesn't just represent Tooele County.

You all -- even though you come from areas -- and I have a great concern about the makeup of this board. I do. I think it's way too biased onto one side. And I think it's something we are addressing with the legislature at this moment. I mean, I think this really makes my point. It's always been -- it almost looks like it's stacked.

And when you look at the way these decisions come down, it's a concern to me. Everybody has got a bias but it's on the side of the industry, it looks like. And so when a county commissioner -- I think it's inappropriate to have a county commissioner that has a fiduciary responsibility on that board. And apparently nobody else has questioned it before. In other counties they have, and they found that it wasn't appropriate. I mean, when you have an elected official who his job depends on, you know, what goes on in that county, it gives him a pretty great incentive to want to have all the employment out there he can get. But that isn't his job as a person on this board. That's totally separate. But it bothers me that even the county believes that. If the county believes that -- I mean, they were bold enough to pass this resolution right in the middle of this. I mean, they are basically telling him, this is what you have got to do. This man is being told by his own county commission that he isn't free to vote on the state as an independent board member. You are independent board members still, is my understanding. That's the way most board members are, they are independent. They are supposed to be. He is not. He is there as a representative of Tooele and I do not believe that is what was in mind when that code was written, and I am taking it up with the Speaker of the House now, and others, because I think it is a huge problem. I mean, if you are going to have a board that you call independent, the public has the right to know that you are independent and that the decisions you make are in the best interest of the entire state, not in the economic development of your county.

Mr. Nelson: Rod, do you have a question?

Mr. Julander: Yeah.

There is agreement that the board members are not independent. You are going to contact the legislature on this issue so --

Ms. Geddes: No. What I am saying --

Mr. Julander: Let me ask my question.

Ms. Geddes: Okay.

Mr. Julander: That then the difference between him and the rest of us you are suggesting is really one of degree. He was not very smart in wearing his badge and we are not very smart in calling him on it.

Ms. Geddes: No, the rest of you --

Mr. Julander: Let me finish, if I could please.

Ms. Geddes: Okay.

Mr. Julander: I'll shorten it because you are anxious to get to it.

My question is, are we talking about a difference in kind, difference in degree between him and other members of the board? If not, then what's the difference in kind?

Ms. Geddes: You know, I go back to is there any other board member who -- here who is in a fiduciary responsibility with Envirocare? Is there one of you that has? I would like to know

because if there is --

Mr. Julander: They are saying that --

Ms. Geddes: Yes.

Mr. Julander: -- the money interest is more critical.

Ms. Geddes: Absolutely. That is the number one issue. Yes.

Mr. Julander: Okay.

Ms. Geddes: There is --

Mr. Julander: If that's your point then --

Ms. Geddes: That is. I thought I made that before. That no one here sets as a fiduciary.

We have case law that has been through this (inaudible) that says that is a conflict of interest.

Now, if you think it isn't, that's a different situation, but there is case law we have cited where -- a similar situation where a fidu -- someone who had a fiduciary interest came in, made a vote and he had a conflict of interest that was determined in the court. That's what we are trying to tell you, is that having a fiduciary interest is a conflict of interest, we believe.

Mr. Julander: Okay. Can I ask a follow-up?

Then my -- my interest in my religion, my interest in my political issues, my interest in my friends are not nearly as significant as an economic conflict.

Ms. Geddes: Yes.

Mr. Julander: Is that what you are saying?

Ms. Geddes: Yeah. It's been that way at the legislature and everywhere else. Everyone has always considered a financial interest, and even if it's a fiduciary, to be a substantial interest. And that makes a big difference in the rest of the board members. You may all come with bias; we all realize that. Everybody has biases. I have biases, you all have biases. We don't expect you to come in here with, you know, no biases. I mean, that's ludicrous. But to have a fiduciary interest and do be in the position of having your county tell you -- I mean, I think that puts a tremendous burden on Mr. Hunsaker, when his own county has told him in a written resolution what he is supposed to do. They shouldn't be guiding his actions on this board.

Mr. Julander: Commissioner Hunsaker also has an interest in the health and welfare of the people of that county. Are you suggesting that -- or that anybody -- as you said, everybody recognizes that anybody -- or most people would say, in a similar situation, that you would expect them to ignore the health and welfare of the people they represent in order to improve the economic status of his budget.

Ms. Geddes: I am glad you brought that up because it brings me to another issue that I forgot to mention, was the statement made in the minutes of the meeting where Teryl Hunsaker was asked about -- there was a question asked about the safety of this bringing in B and C waste and his statement was, we have been out there, we know it's safe.

Now, he was standing there telling you all that a project that's not even up there is safe because he has been out there.

And I don't recall anybody saying, that's odd, you know, or -- when I read it, I read specifically to see, well, didn't someone counter that? No one did.

So I am concerned about that. To me that was a frivolous statement for someone to say. And I don't know what he expected to see, if there is a neon light that says, this isn't safe that goes on, a light or something, when he went out there.

But he was standing there telling the board that it's safe because he has been out there. Well, he couldn't tell whether it was safe if he was out there or not. You can't tell if it's safe by looking at it and you certainly couldn't tell the safety of something that wasn't already there. So to me not --

Mr. Julander: You didn't answer my question.

Ms. Geddes: No, I would think that his evaluation of safety --

Mr. Julander: Not his particularly, but in general that this is a --

Ms. Geddes: No. I think he made an extremely frivolous statement during the hearing about the safety --

Mr. Julander: The question is with your emphasis on the economic interest --

Ms. Geddes: And I believe that's where his is.

Mr. Julander: With his emphasis on the economic interest, you are suggesting that this is

more important or would generally be more for important to most elected officials than -- let me finish because I am asking it twice; I would like an answer -- that this is more important than an interest in the health and safety of the citizens of that -- that he is representing.

Ms. Geddes: Let's be careful.

Mr. Julander: That most people would so consider.

Ms. Geddes: We are not talking about most people, we are talking about Teryl Hunsaker, so let's keep it to that. I don't want --

Mr. Julander: I am asking the question --

Ms. Geddes: I am saying I don't --

Mr. Fred Nelson: Excuse me. Can I help the court reporter out here? If two people talk at the same time it's impossible for her to take it down, so could we make sure that we don't start talking until the other person finishes.

Mr. Julander: We are making a determination on Terry's conflict of interest. We have to do it based on a general concept, not just on whether we like him or not. So I have to at least have some general guidelines in which to do, and one of the, seems to me, major points in your case, as you have said, is that a financial conflict is greater than other conflicts.

Ms. Geddes: It is. And I would think --

Mr. Julander: So my question is, in general, would you say that most people would consider a financial conflict as a greater -- or a financial interest is a greater conflict or greater interest than that of the safety and health of the people they represent?

Ms. Geddes: I don't quite understand that because he is not considering -- he has no way to consider the safety and health of the people. What his job is, is not the safety and the health of the people out there. What his job is, he considers -- at least he said that -- he is worried about a meeting. That was his statement in the newspaper. And I would generally say that -- you know, I have given you four basic concrete concerns about conflict of interest. We have given you case law to uphold those.

Now, if that isn't enough, that's all I can give you. I have told you about his fiduciary duties, campaign contributions, which in themselves do not add to a conflict of interest but in the total body they add great weight. Told about him being biased towards the company, by his own statements, and, you know, this is nothing we have brought on Mr. Hunsaker, these are things that he has voluntarily went out and put out into the community and you can't expect the community to sit back and not react to that.

It seems like we are being blamed for suggesting this even came up, when I'm abhorred that someone else hadn't said something sooner. So I think I have given you very concrete issues of why this is a conflict. There is a statute up at the legislature that's all drawn out about conflicts and fiduciary issues and -- in the due process, and the law states that. So I can't be much more specific than where I have been.

Mr. Nelson: Dianne.

Ms. Nielson: Mr. Chairman, if I could just ask a couple of clarifying questions to make sure that I understand representation.

Excuse me. The motions in this matter were signed by Jason Groenewold on behalf of FAIR and I'd just like a clarification because Miss Geddes doesn't appear as an individual who has filed these documents and -- so that we can make this relationship in the record.

Are you a member of FAIR?

Ms. Geddes: We have all worked on these together. In fact, wasn't it listed as FAIR and -- the same group that --

Mr. Groenewold: FAIR, et al.

Ms. Geddes: FAIR, et al. So that's both the groups. And he is arguing the other issue and I am arguing this. So --

Ms. Nielson: Maybe if I could just ask for clarification for the record from Jason that -- since he is the one that has signed these documents and because we are dealing not with representation from the attorney but from members of the organization.

Jason, is it your intent and understanding that Claire Geddes is representing your interests also in the presentation she is making before the board on this matter?

Mr. Groenewold: She is. And just on the first page of the motion to disqualify, under the

introduction, about the fourth line, we have listed FAIR, et al and -- with the intent that that would represent all of the petitioners in this matter.

Ms. Nielson: Okay. I appreciate that. I just wanted to make sure that that's clear for the record.

Mr. Chairman, could I ask one other question?

Mr. Nielson: Please.

Ms. Nielson: The concern that you raised about the badge that Commissioner Hunsaker was wearing, that was in a January 11th hearing in Tooele?

Ms. Geddes: Uh-huh.

Ms. Nielson: Was that a hearing of the Board of Radiation Control or was that a hearing of the Division of Radiation Control?

Ms. Geddes: My understanding, it was a hearing held to take input on the exemption, and it was held out in Tooele. There were board members there. It was my understanding it was -- it was a meeting for board members, although I don't think it would matter which forum he wore it in, you know, if he was there as a board member, and he was there as a board member out at a Tooele County meeting.

Ms. Nielson: Okay. Thank you.

Mr. Nielson: Other questions? Okay.

Fred, did you suggest we hear next from counsel for --

Mr. Fred Nelson: If there are any comments from the counsel for the Executive Secretary for Envirocare, and then because the issue involves Mr. Hunsaker, he should be given an opportunity to make any comments.

Mr. Nielson: Okay. So we'll go in that order.

The Executive Secretary's counsel, any comments?

Ms. Lockhart: We don't have any additional comments. If anybody would like to ask questions about the memorandum, we would respond to that.

Mr. Nielson: Okay. Dianne.

Ms. Nielson: Yes. I would like a clarification on the question that I just asked Miss Geddes.

Was the January 11th hearing a hearing of the Division of Radiation Control and the Executive Secretary or was it a hearing of the Board of Radiation Control?

Mr. Nielson: I believe I can answer that.

If my memory is correct, I was the hearing officer and it was a hearing on the land ownership exemption, so that would have been to the board.

Ms. Nielson: Thank you.

Mr. Groenewold: Question of process.

Mr. Nielson: Yes.

Mr. Groenewold: If Envirocare didn't file any response to this particular motion, are they granted the ability to make arguments on that motion?

Mr. Nielson: I want to hear -- personally want to hear from anybody that has got anything relevant to say.

Hold on a sec. Just a minute. I want to see if I have any notes in here. Okay. I'm happy.

Ms. Reid: I have a question for Fred. My name is Barbara Reid, r-e-i-d, and I have a question for Mr. Nelson. And that is regarding the Utah Radiation -- the matter of issuance of radioactive license. This is that introduction that we were discussing currently. This is signed by Jason Groenewold. I am looking at page five, first paragraph. Due process and administrative law.

Mr. Fred Nelson: Now, is this the motion --

Mr. Nielson: I think so.

Mr. Fred Nelson: -- to disqualify?

Mr. Nielson: Yeah, motion to disqualify.

Ms. Reid: If this isn't an appropriate time to ask this question --

Mr. Fred Nelson: Page five?

Ms. Reid: Yes.

Mr. Fred Nelson: Okay.

Ms. Reid: My question is that they have cited an administrative law 316 at 327 in 1994,

specifically, a municipal officer who sits on an administrative tribunal must be disqualified for bias if the tribunal's decision will significantly affect the municipality's budget. And it's Ward versus the City of Monroeville.

This is out of context. Where is this coming from? What are they really stating?

Mr. Fred Nelson: That case is cited both in the petition and I think Miss Lockhart also referenced the case.

You would need to look at the specifics of that case to make sure what the representations are there fit exactly what the case says. But you have two descriptions of that. It's one of many cases, as you saw from Miss Lockhart's memorandum on these issues. These issues tend to be fact specific and so when you look at cases it's important to remember that you try and get a feel for the principles and use the principles to apply the facts to and then come up with a decision.

Ms. Reid: Okay.

Mr. Nelson: Miss Lockhart.

Miss Lockhart: I didn't anticipate this with a lay board, but I could easily get a copy of that for you immediately if you would like that.

Ms. Reid: Okay. I would try and read it.

Mr. Nelson: Okay. Have Mr. Holtkamp come forward then.

Mr. Holtkamp: My name is James Holtkamp representing Envirocare and I just want to make a few comments with regard to the motion to disqualify.

We believe that the motion is groundless, and there are a couple of points we would like to make as we listened to and read the submittals with regard to this particular motion.

Basically the board is being asked to change the law. Each of you is appointed pursuant to a provision that requires that, a, you be knowledgeable about radioactive materials regulation, and, b, that you represent some -- or that you are -- represent some area of expertise or some particular segment.

In Commissioner Hunsaker's case, of course, it's an elected county official. He has two requirements he has to meet, number one, that he be an elected county official and, number two, that he be knowledgeable about radioactivity and radioactive waste.

The fact that he is an elected county official in Tooele County, which is also the county in which Envirocare is situated, is not a basis for disqualifying him. In fact, I would suspect that the intent of the legislature -- if the legislature wanted to ensure that only elected county officials that were in counties that did not have regulated facilities, they would have said so. But they did not make that qualification and FAIR would have you read into the statute that qualification.

I find it very interesting the assertion that Commissioner Hunsaker has no responsibility for the health and welfare of the people he represents. He is an elected official. Certainly if I were a resident of Tooele County, I would have some concern about the health and welfare of myself and my family in making decisions about who my leaders are.

I may or may not agree with Commissioner Hunsaker on his decisions but, nonetheless, he has that direct responsibility and I think that basically goes without saying.

But I would suggest, first of all, that this board really doesn't have the authority to do what the legislature ought to be doing, if that's what FAIR wants to do, and that is to change the statute.

So my first point is that a board member should not be disqualified simply because that board member happens to comply with the statute under which he or she is appointed.

My second point is that if you go through the assertions made by FAIR to try to establish that Commissioner Hunsaker should be conflicted out, that's a very, very slippery slope.

First of all, we don't believe that they are sufficient to merit disqualification.

But, secondly, the implications are pretty significant, not only for this board but for the other boards who are similarly constituted under the Department of Environmental Health.

The question would be any time that a board member expresses opposition or support for any entity that might come before it in a general way, is that a means of disqualification?

Miss Geddes made a very significant statement in her presentation and that was that Commissioner Hunsaker didn't say he supported Envirocare in any particular issue. The badge indicated he generally supported Envirocare.

Well, any expression by anybody of general support or opposition, would that be sufficient for disqualification? Any public official with authority to impose taxes, is that a grounds for

disqualification?

There was some question about this Supreme Court case that -- cited both by the Executive Secretary's counsel and in FAIR's motion. And you need to read the case. It's an interesting case. It involves a mayor of a small town who also sat as a Justice of the Peace. Justice of the Peace -- the overwhelming source of revenues for that little town was traffic fines. So any time somebody was caught speeding, allegedly, appeared before the mayor and he had the power to levy the fine, to convict or to acquit.

And an individual was convicted by the mayor of two traffic offenses. And that case went all the way to the United States Supreme Court, who held that in a criminal proceeding, where the mayor had a clearly vested interest, because he not only sat as the executive, he sat as the judicial officer and the overwhelming majority of the revenues came from traffic fines, that he shouldn't be sitting in judgment.

Well, here we have a situation much removed from that. Envirocare does provide revenues to Tooele County. But Commissioner Hunsaker is sitting on the Radiation Control Board in this particular proceeding. The board has no authority to tax or levy fees.

Of course he has an interest in the economic well-being of the county, but he also has an interest in the health and safety of this county. His decision with regard to Envirocare is -- may or may not have an impact on the county revenues, but it's a far cry from a mayor who is convicting traffic offenders who provide the fines which fund the city.

But I think you ought to read that case. In fact, I would counsel you in both of these -- I would suggest that in both of these motions there are a lot of cases, and although it's a little dry -- only people who enjoy being bored go to law school -- you ought to read at least the principal cases so you can make your own determination as to whether they say what they say.

I think that's about all that we want to say; that we don't see any reason for Commissioner Hunsaker to be disqualified, and the implication of a disqualification of Commissioner Hunsaker are far beyond that.

In connection with that -- before I sit down -- I would like to distribute something for the record.

This is a letter that many of you received, I think yesterday, from the Utah Manufacturers Association, which simply highlights some of these implications. I'll leave one for the reporter.

You want to pass those around? I think we have enough. Fred, I will give you the rest just so you can...

So if you have any questions I would be happy to respond. If not, I'm done.

Mr. Nelson: Any questions for Mr. Holtkamp?

Mr. Holtkamp: Thank you.

Mr. Nelson: Cindy, you look anxious to make a comment before we move on.

Mr. Fred Nelson: Mr. Chairman, maybe this is a point in time where we ought to -- Dianne referred to an issue by asking who is representing who and who has made what motion.

With respect to the petitions to intervene, it is a more difficult issue and so I had reserved discussing that before we started the petition to intervene. But I do not believe that Sierra Club has made a motion to disqualify, so unless you're representing one of the parties that made the motion --

Ms. King: I have a concern on the process, though.

If Envirocare, who did not submit a motion to intervene, is allowed to speak, my question is why we are not allowed to speak on this issue.

Mr. Fred Nelson: They are a party to the proceeding already.

Mr. Nelson: And Sierra Club is not a party to this motion.

Mr. Fred Nelson: Right.

Ms. King: I didn't realize. I thought that -- and I want to make clear when Dianne asked who FAIR was representing that it was not representing the Sierra Club in that -- all representation. That's what I wanted to make clear.

And I also have a point of clarification that has not come out that needs to be determined also.

Mr. Fred Nelson: Well, it's in the board's discretion to hear matters so...

Mr. Julander: I move that we allow her to speak.

Mr. Nelson: Okay. That's a formal motion?

Mr. Julander: If we need it.

Mr. Nelson: I mean, is anyone opposed to hearing?

Okay, go ahead.

Ms. King: Just to make clear. I understood that the chairman did say he would like to hear all interested parties; that's why I am speaking, and if that is not what he said then --

Mr. Nelson: Well, that is what I said and that is what I meant, but I don't want to violate proper administrative protocol as well.

Ms. King: I think the issues at hand and related to this issue has to do in three folds. Each of the board members here represent an interest of the community of the state of Utah. Those interests are not singly based on where the individual resides as a resident or any other fiduciary duties they may or may not have.

My concern is, is that, as implied and mentioned before in a board meeting, that all of the members of this board have to abide by the Public Employees Ethics Act. If that is true, that they have to do that, then it comes into question whether or not one of the board members has violated the ethics law out of the state of Utah. By FAIR and others that represent under the FAIR's motion, that issue is at question. Whether or not there is a conflict and whether or not the board in and of itself represents employees there of the state.

If that is true, the assumptions made by counsel of Envirocare implies that Mr. Hunsaker represents their interests. That is not an uncorrect assumption because another board member represents the interest of radioactive materials such as Envirocare. And those interests may or may not be the same as the county commission -- as a representative representing the county of the state of Utah, which the position of that board member represents. Therefore, a single county is not singled out because they have a facility or don't have a facility.

The issue dealing -- that was brought up with Commission Member or Board Member, whatever the proper title is, Julander, the issue dealing with public health and welfare. It is the responsibility of each of the board members, regardless of why you are here and what interests you represent, that you represent the state interest, whether it is for industry, whether it is the public representative, whether it is for a county rep. Therefore, your interests are not singled out because you gain or disgain fiduciary responsibility. Therefore, Mr. Hunsaker's position is not only to represent the County of Tooele but to also represent the other 28 counties in the state of Utah. If I'm not mistaken, there are 29.

We have not heard whether or not Mr. Hunsaker's issues that were brought up by FAIR represent those interests of the other 28 counties. That is his responsibility, to my understanding, of his role on this position of this board, and I would like to make it clear how the Public Employees Ethics Act come into play, if it is true that you have to abide by that law, and we cannot be acting as quasi state agencies or state employees for the sole purpose to hear an adjudicated proceeding.

Thank you.

Mr. Nelson: Questions or comments before we turn to Teryl?

Mr. Groenewold: We are open for five minutes of closing, if that would be after Mr. Hunsaker speaks or before.

Mr. Nelson: Gee, I don't know. Let's hear from Mr. Hunsaker.

Mr. Hunsaker: Mr. Chairman, I pass. I have no comments.

Mr. Nelson: Okay.

Does anybody have anything to say before we move on?

Then, Jason.

Mr. Groenewold: Yeah. These are just a few final closing comments on this to just remind why this motion was -- to reflect on why this motion was filed.

We are about to enter an adjudicatory proceeding, meaning this board is going to stand in judgment of the merits that we bring before you on the issuance of a license to Envirocare to accept higher forms of radioactive waste.

If this was a different facility, say International Uranium Corporation, this motion probably wouldn't have been filed.

I think we have to look at what is a conflict of interest and where this whole idea came from. There is a lot of case law and, in fact, I think counsel for the Executive Secretary really did

a good job in summing up some of those cases to show when someone behaves in a certain manner that clearly impacts their decision, predisposes them to judge an issue before they have heard the merits of the case, that's a conflict of interest.

What we have done is cited the examples where we believe that Mr. Hunsaker has exhibited that he has already prejudged the facts of this case before we have even brought them to the board.

Now, if you agree that based on his interests in this issue that that has influenced him and biased him and prevents him from being able to objectively look at this issue independently of what the interests of this county is and his personal feelings, then you would rule to waive our motion.

But if you find that his behavior and his actions do, in fact, meet the standards that have been established in case law, which we clearly point out and we believe quite clearly they do, then you must vote to support this motion and disqualify Mr. Hunsaker.

You had asked, Mr. Julander, whether or not political views or religious views or economic interests trump one or the other. It depends on the circumstance. I mean, if you were a black man and I was member of the KKK and you were on trial in my court on a suspected crime and I wore my robe to that proceeding, I would expect that you would file for a conflict of interest and a motion to disqualify, because there is no way that I could possibly hear your case because my bias is so overriding.

So there obviously are circumstances where a political view or a religious view may trump someone's economic interests. This particular case, we feel that the economic interests are quite strong. Five percent of Envirocare's revenues are over \$5,000,000 a year.

For a county in this state, that's pretty significant, and I think that it's very difficult and -- for someone in Mr. Hunsaker's position not to act in the fiduciary responsibility that he has for the county and, in fact, he has clearly showed us by wearing the badge, by accepting campaign contributions, by making statements to the press. His own commission members are encouraging him to vote the interests of that county.

So I think the cases -- you know, like when we go back to Ward versus Monroeville, that is a perfect example. That particular judge was making money based on his position in another venue and that's exactly how -- or his -- excuse me -- his city was acquiring money.

That's what we have with Tooele County. And this isn't about changing the law or changing the statutes, it's about upholding law. This is about due process. This is about a constitutional right to fair proceedings and a fair hearing before this board on a matter that's extremely significant to the welfare of the people of Utah. And that's what we are asking for this board, is that we are guaranteed those due process rights given to us by the constitution. And that's going to trump any statute, any rule that this board may have. Obviously it's been dealt with in the past. Conflict of interest has been clearly established. There is case law to support this and we would ask that Mr. Hunsaker be disqualified from these proceedings.

Thank you.

Mr. Nelson: Does anyone else want a last word on this?

Yes, Mr. Holtkamp.

Mr. Holtkamp: Well, as long as there is a lawyer in the room and you have asked for a last word. I'll be extremely brief. Just a couple points.

There has been a lot of reference to the word fiduciary in connection with a county commissioner's responsibilities and I think that's a misapplication of that term.

Fiduciary is a term that is used in a banker who has control over the funds of somebody, a board member of a corporation has a fiduciary duty to the stockholders so I think that's a little bit of a smoke screen.

I also would simply point out that we have heard a lot -- another term, due process, and due process is very important. Envirocare needs to have due process in front of this tribunal as well as any other person or entity that's admitted as a party.

The due process that the petitioners are talking about and the case cited, this Monroeville case, is criminal due process, where your personal liberty, your personal finances are at stake. We are talking about administrative due process, which is a completely different standard and I would hope that the two wouldn't be confused.

And at the risk of belaboring any more points, I guess I'm done, unless you give me another

chance for a last word.

Mr. Nelson: Thank you.

Any board member wish to ask any questions or engage in any discussion, make any comments before we move on?

Mr. Julander: May I -- after we hear the second issue will we simply proceed, then, to vote so any discussion we have should be taken -- to take place now?

Mr. Nelson: Well, that's not what I'm saying is -- I think if it comes to a vote there will need to be some discussion. I have some comments and questions, certainly.

Okay. Is that clear as mud? Okay. Let's move on.

Mr. Fred Nelson: The next issue is there are several petitions to intervene that have been filed in this matter. Let me summarize the pleadings.

Ms. Nielson: Mr. Chairman -- excuse me -- before we proceed, with all due respect to the commissioner, I think there was an understanding that for these matters that we are now discussing that he was going to recuse himself.

Mr. Nelson: Oh.

Mr. Fred Nelson: And not participate in the discussion or the vote.

Ms. Nielson: And, generally speaking, in board meetings when that's occurring, the individual also doesn't sit at the table with the board and so I would -- as I said, with all due respect, but I think in reflection of that it would be appropriate.

Ms. King: Mr. Chairman, can we ask for a five-minute break so the court reporter --

Mr. Nelson: Let's keep going.

Ms. King: Okay.

Mr. Nelson: If it goes on -- if it looks like it hits the 3 o'clock hour, then we'll take a little break.

Okay.

Mr. Fred Nelson: The initial pleading filed by FAIR, et al. was filed on behalf of three nonprofit corporations, FAIR, Utah Legislative Watch and Citizens Against Radioactive Waste in Utah. It was also filed by nine named individuals.

The second petition -- or second pleading was filed by Sierra Club and not on behalf of any specific individuals but was just filed by a Sierra Club chapter.

The initial question that we need to resolve in looking at these petitions to intervene revolves around the rule of the board dealing with appearances and representation. The board's rule, specifically R213-17-5 (4) (a) says that an individual who is a participant to a proceeding or an officer designated by a partnership, corporation, association or governmental entity which is a participant to a proceeding may represent his, her or its interest in the proceeding.

Recognizing that the board wants to make sure that they get all the information -- and that should be the goal of the board -- you still need to, based on this rule, follow a procedure. And the basis for this rule is to make sure that the record is clear as to who is speaking for who.

And so in a court process, where you are creating a record, you need to make sure that the individuals who are appearing specifically indicate who they represent. And based on the rule of the board, which is a fairly liberal rule -- there are some boards who say you are either represented by counsel or you appear representing yourself; they do not allow organizations to be represented by non-counsel.

This board has a more liberal rule in that if you are an individual you can represent yourself, you can be represented by an attorney, or if you are an organization you can be represented by an officer, is the term, that is designated to represent you.

So the petition that was filed has nine individuals that are listed and my initial question is, are any of those nine individuals here and going to represent themselves, because they cannot be represented by someone who is not a lawyer; only in their capacity as a member of the organization. So my understanding is all of these individuals are members of FAIR and they can be represented by FAIR, but are they going to be represented individually?

Mr. Groenewold: Should I answer that?

Mr. Fred Nelson: Yes.

Mr. Groenewold: Yeah.

And just a point of clarification. They are either a member of FAIR or one of the

organizations, Utah Legislative Watch, FAIR or Citizens Against Radioactive Waste in Utah. And, no, there will not be an attorney, we will be representing as officers of those organizations.

Mr. Fred Nelson: Okay. So for purposes of this petition to intervene, the board does not need to act on petitions by those individuals to appear on their own behalf.

Mr. Groenewold: Correct.

Mr. Fred Nelson: That leaves, then, the three organizations, FAIR, Utah Legislative Watch and Citizens Against Radioactive Waste. Is there a designated officer to represent each of those? Who are the designated officers to represent those?

Mr. Groenewold: For today's proceeding myself will be representing Families Against Incinerator Risk, et al., and Claire Geddes obviously also will be speaking, and potentially John Jensen, who is to our right.

Mr. Fred Nelson: Okay. Claire Geddes, you are going to represent Utah Legislative Watch?

Ms. Geddes: Yes.

Mr. Fred Nelson: Is Mr. Jensen going to represent Citizens Against Radioactive Waste in Utah?

Mr. Groenewold: We are representing the collective interest of all three organization.

Mr. Fred Nelson: Well, the rule provides that you need to designate an officer to represent the organization.

Similarly, if an attorney represents a group, the members of that group will not be presenting information or evidence, it will be the attorney that is presenting the information or evidence.

Now, the board, in their discretion, can broaden this out and allow, you know, more individuals to represent a single organization, but as a matter of procedure, it's typical for you to designate an individual to represent that organization and not allow multiple people to represent that organization.

So that is an issue that the board will have to determine if they don't want to designate who they represent.

Mr. Nelson: Would it be appropriate for the board to allow one individual -- an officer of one of those organizations to speak for all three since they filed a joint petition? Is that --

Mr. Fred Nelson: If you would like to design -- my understanding is that -- well, are you all officers in each of those three organizations?

Mr. Groenewold: The two of us are.

Mr. Fred Nelson: You two are. Okay. Well, that would be appropriate.

Mr. Nelson: So if there is somebody that's an officer in each organization --

Mr. Fred Nelson: Yes.

Mr. Nelson: Okay.

Mr. Fred Nelson: So Mr. Groenewold and Miss Geddes, they are going to speak as officers for FAIR, Utah Legislative Watch and Citizens Against Radioactive Waste?

Mr. Groenewold: Yes. Well, yeah. Again, for the collective interest of the petitioners.

Mr. Fred Nelson: Is there an officer of Citizens Against Radioactive Waste here?

Mr. Groenewold: No.

Mr. Fred Nelson: Well, my recommendation is that the rule says unless there is an officer of that organization present to speak on their behalf then the board should not entertain a motion to intervene and grant intervention unless there is an officer here to speak on behalf of that organization.

Mr. Nelson: Jason.

Mr. Groenewold: Yeah. That's probably not the same interpretation that we have of the rule. I think the spirit of the rule is to allow organizations and individuals to represent and bring concerns before this board without the necessity of hiring a counsel -- or an attorney. And what we have done is -- collectively throughout this process -- worked with petitioners in the three organizations to file a -- joint motions.

I mean, it seems to me the pattern that this would be setting up is three different arguments, three different hearings on every single point that we go through.

And one of the things that we had said to the board in one of our very initial filings is

understanding we have numerous petitioners listed in these proceedings we would be willing to streamline that by designating, you know, one to three individuals to represent the interests of those organizations and those petitioners.

Mr. Nelson: Can I ask a question? Is there any -- is there any practical disadvantage for just -- for example, you and Miss Geddes addressing the board if there is not an officer of the third organization? In practical terms does that have any impact?

Mr. Fred Nelson: See, the concern is not -- the concern of the rule is you make sure you have people appearing before the board who are authorized to appear. If an individual just comes and says, well, wait a minute, I am authorized to appear before Citizens Against -- or on behalf of Citizens Against Radioactive Waste. The board doesn't have on the record someone who is saying, I am an officer, I am authorized to appear on their behalf. That's the issue.

Mr. Groenewold: Right. We --

Ms. Nielson: Mr. Chairman, maybe I could ask a question and Jason could respond -- or Mr. Groenewold could respond to that also.

Maybe a perspective on this, I guess, from my consideration, is one of exclusion. It would be unfortunate were we to go through this hearing today and not have an officer representing the Citizens Against Radioactive Waste and to have them come back at a later meeting and say, excuse me, but we weren't recognized and the rule says that we should have been able to be recognized or for some reason we would like to follow some -- file some follow-up comment.

It seems to me that what Mr. Groenewold is saying is that representatives of Families Against Incinerator Risk and Utah Legislative Watch are the entities that are appearing here today and so I'm wondering, is there a way to resolve this by simply recognizing that there is no one here who is representing the third group today, and we take that to mean that they will not be appearing and raising this issue in some subsequent forum.

Mr. Fred Nelson: That would be appropriate.

Ms. Nielson: The fact they are not here either represents that they feel that their interests are represented by the two other groups or they chose not to make additional comment, but that it would be reasonable for the board to expect that we are not going to hear from them solely at some future date.

Mr. Groenewold: That is correct. Correct.

Mr. Fred Nelson: Okay.

Ms. Nielson: And so what you are saying, Mr. Groenewold, is that you expect that that's a fair representation?

Mr. Groenewold: Yes.

Mr. Fred Nelson: Thank you.

With that clarification, the pleadings that are in the file on this issue are the original intervention pleading by FAIR, the pleading by Sierra Club.

Envirocare filed a response to the intervention request in September and then just recently you also should have a supplement to FAIR's request. And you should also have a supplement that was filed by Envirocare that provides additional information.

To my knowledge, the Sierra Club did not -- they provided an affidavit but did not file anything within the last couple of weeks as a supplement. And neither did the Executive Secretary file any pleadings on this issue.

My suggestion to the board on the process and the way to handle this is to hear first from those who are petitioning for intervention, FAIR and the Sierra Club and Utah Legislative Watch, and then at that point hear from Envirocare and any comments of the Executive Secretary.

This -- this process, again, is done by having parties to the proceeding and so those are the entities at this point that are authorized to speak to the board.

Ms. King: My name is Cindy King. I represent the Utah Chapter of the Sierra Club.

We reluctantly request to withdraw from this administrative adjudicated actions for the following reasons.

Currently Envirocare has a strategic lawsuit against public participation, also known as a slap suit, against one of our members. And employees of Envirocare have what we call inappropriate behavior towards that member.

We have no guarantees from Envirocare that this inappropriate behavior will not continue,

which adds an additional burden to us to continue in this administrative adjudication, as we currently still have no legal counsel to assure that our rights are not -- are going to be protected. We do not speak on behalf of individuals who have submitted affidavits because of our request. Ergo, we are not speaking on behalf of any rights they may, as individuals, choose or not choose to continue as individuals at this administrative process.

Mr. Fred Nelson: If I understand, then, Miss King, you -- Sierra Club is withdrawing from the proceedings so they do not need to make a determination on the petition to intervene by Sierra Club.

Ms. King: That is a correct assumption based on the reasons that I stated.

Mr. Fred Nelson: Thank you.

Mr. Nelson: Jason.

Mr. Groenewold: Okay. I think for ease in dealing with the particular matters before the board now; we submitted two things in our original appeal -- or three things; petition to intervene, request for agency action and the request for agency review.

I think it would be easiest to deal with the request for agency review, which is very well defined by statute and by rules and then separate from the request for agency action.

What a request for agency review does is it requests the opportunity to review whether or not the correct procedures were followed in conducting the hearings and the proceedings and the issuance of the license by the Executive Secretary in giving that license to Envirocare.

As we briefed in our original petition and also in supplemental filings, the Utah Code says, if a statute or the agency's rules permit parties to any adjudicative proceeding to seek review of an order by the agency, which is what we have done, the aggrieved party may file a written request for review within 30 days after the issuance of the order, which we did.

Within 15 days of the mailing date of the request for review, or within the time period provided by agency rule, any party may file a response with the person designated by statute or rule to receive a response.

So what that means is after we had filed our request for agency review, anyone, Executive Secretary, Envirocare, Air Force, anyone that was interested in these proceedings, could have filed a response on that request for agency review. That has not occurred.

Therefore, under the board's rules of R313-17-5(1a) it allows parties to contest the validity of initial orders. And we would ask that the board go ahead and grant intervention in the request for agency review in these proceedings. And the standard for that is a little bit different than request for agency action. And what it is is any member of the public who participates in the notice and comment process is entitled to intervene for the purposes of the agency review. Therefore, with those rules and those statutes in place, we would ask that the board grant our standing and petition to intervene for the purposes of agency review.

I would take any questions on that.

Mr. Nelson: Yeah. Could you review for us what the standards are, in your view, for being granted agency review?

Mr. Groenewold: Simply that one or more of us participated in the public comment period and process that was initiated by the Executive Secretary in issuing the license to accept containerized A Class B and C radioactive waste. We have several -- it was stated in our affidavits and in the appeal itself, one of our members who, in fact, have done that.

And so for the purposes of simply reviewing whether or not the Executive Secretary went through those proceedings according to statutes and according to rules and followed all -- you know, dotted the i's, crossed the t's, if you will, that's what the request for agency review is.

Mr. Nelson: I think what I'm reading here -- it says on page two -- if I am reading the right document -- it says that -- written here that the act provides that the petitioners' legal interests may be substantially affected by the formal adjudicative proceeding and, b, the interest of justice and the orderly and prompt conduct of the adjudicative proceedings will not materially be -- will not be materially impaired by allowing intervention.

Is that what you are...

Mr. Groenewold: Yeah. It affects that particular process and that also applies -- because there is two requests, one is for agency action and then the other is for review. And if I may just grab that particular motion to see if I'm reading correctly.

Is that the one dated from October?

Mr. Nelson: It's Petitioner's (inaudible) Supplemental Response, Petition for Intervention. Or is that not the right one? It says, request for agency review and petition to intervene. It has got a December date. I can't read the date on it.

Mr. Groenewold: Okay. Maybe looking back at the September filing.

Ms. Nielson: What is the date on that, please?

Mr. Groenewold: Yeah. This was filed on September 28th. It's an eight-page document.

Mr. Fred Nelson: It's the one that has all the affidavits attached to, that he filed initially.

Ms. Nielson: Okay.

Mr. Fred Nelson: Was it sent out again, Bill?

Mr. Sinclair: It was, it was, Mr. Nelson.

Mr. Nelson: I have got a bill. We are talking about the 17 August 2001. Yeah. I have got an 18-page with lots of affidavits.

Mr. Fred Nelson: Yes.

Ms. Nielson: Yeah. I think the concern is the September 28th filing, I believe, was the response and objection to that petition.

Mr. Groenewold: Okay. We can work off the December one if that -- that's fine.

Mr. Nelson: I just want to work --

Ms. Nielson: We can work off any one, as long as we are all on the same document. So tell us which one you are on and we'll find it.

Mr. Groenewold: We can go to the December one. The request for agency review and petition to intervene does lay out what the standards for that are.

Mr. Nelson: That's what I read, is -- do you agree with that, on page two in the middle of the page?

Mr. Groenewold: It would be --

Mr. Nelson: Standing requirements generally.

Mr. Groenewold: No, it would be just before that particular paragraph. The request for agency action and petition to intervene is differentiated from --

Mr. Nelson: Okay. All right. I just want to be able to read what -- where you are going. Okay.

Mr. Groenewold: And so again repeating, under the board's rules, at the top of the page, it allows parties to contest the validity of an initial order and that that be done according to the Administrative Procedures Act. And that's -- and that lays out who should be granted standing for the petition to intervene for the request for agency review and that would be for any person who participated in the proceedings. So it does not have that same language as far as legal interest that may be substantially affected.

Mr. Nelson: Okay.

Mr. Holtkamp: Just a point of clarification.

We are having trouble identifying where this is that he is referring to.

Mr. Nelson: Oh. I'll help you as much as I can. It was in my supplemental packet for today's meeting that was mailed, not the one we picked up when we got here.

Mr. Fred Nelson: What is -- what is the cite to the rule that you are talking about that says that parties who participated in the proceeding can participate in the review of that?

Mr. Groenewold: That's -- in the first paragraph it states on page one -- or, excuse me, the second paragraph -- that if a statute or the agency rules permit parties to an adjudicative proceeding to seek review of an order by the agency or by superior agency, the aggrieved party may file a written request for review within 30 days after the issuance of the order with the person or entity designated for that purpose by the statute or rule.

Mr. Fred Nelson: The term parties to an adjudicative proceeding means parties who have been admitted to an adjudicative proceeding. The licensure process and the hearings were not adjudicative proceedings.

The standard for intervention for both agency review and -- what you term agency review -- and for request for agency action are the same. You need to meet the standing intervention requirements. You are not automatically a party because we have not had an adjudicative proceeding to this point. We have only had an administrative hearing process in conjunction with

the license.

Mr. Groenewold: And so the understanding that we hold is based on participation in the proceedings that the Executive Secretary held, we have the legal interest of whether or not those proceedings were conducted properly and that is -- focused more on those individuals who participate in the actual proceedings themselves.

Mr. Fred Nelson: Okay. I understand your argument and I think what we ought to do is you continue and finish your argument then we'll hear from the Executive Secretary and from Envirocare.

Mr. Groenewold: So move on to the argument for the request for agency action? Because we see those as two different matters; that -- the petition to intervene for the purposes of requesting review of the Executive Secretary's procedures in issuing the license and then the request for agency action.

Mr. Fred Nelson: I understand what you are arguing.

Mr. Groenewold: So I guess the question to the board then, do you mean go on, then, to the request for agency action and petition to intervene for that particular --

Mr. Fred Nelson: The board has granted a time period to make argument on your petition to intervene, and that's what we are hearing here today.

Mr. Groenewold: Sure. But I didn't know if the board would like to make that decision -- those two decisions separately or if you would like us to continue to move on to the second piece of this.

Mr. Nelson: Well, unless -- I don't want to be unfair to anyone, but unless I have misunderstood, that -- isn't the petition for agency review off the table because that was not -- commented in a public hearing but it was not an adjudicative meeting?

Mr. Fred Nelson: Well, the request that they have filed requires that the board grant intervention, whether they term it --

Mr. Nelson: No matter what they call it.

Mr. Fred Nelson: No matter what they call it, it requires the board to grant intervention.

Mr. Nelson: Okay. So why don't you make your arguments then.

Mr. Groenewold: Okay.

The second piece of this looks at the standing requirements generally to gain access to a hearing before the board. And the Administrative Procedures Act lays that out, if the parties' legal interest may be substantially affected by the formal adjudicative proceedings.

And the second tier of that is that the interest of justice and the orderly and prompt conduct of adjudicative proceedings will not be materially impaired by allowing intervention. And then that's incorporated by the board's own rules.

Moving from there. This basically incorporates the same standing that's been used for some of the judicial cases which lay out some of those requirements. In *Jenkins versus Swan*, and *National Parks and Conservation Association versus the Board of State Lands*. They come up with three criteria that a party must meet for gaining standing to a proceeding. And that is they must meet one of three of those criterias.

One is to demonstrate a personal injury to the petitioner caused by the legal action.

Or, show that no one else has a greater interest in the outcome of the proceedings and issues are likely to be -- that the issues are unlikely to be raised at all unless that particular plaintiff has standing to raise the issues.

And, third, that the issues are so unique and of such great public importance that they ought to be decided in furtherance of the public interest.

We have laid out in our affidavits and in our appeal various ways that we have personal injury based on the license that was issued to Envirocare, and that our legal interest may be substantially affected by the Executive Secretary's decision.

We submitted affidavits to the effect that our members are -- could face decreased values in their properties based on the issuance of their license.

We also talked about the liability to petitioners based on either their insurance not covering the cost of an accident that could occur based on nuclear waste transportation accident or that -- the second tier of that would be since we don't have commitment by a government agency, by default petitioner could be affected through increased taxes.

Another point that was raised in the affidavit which alleges impact to petitioners gets into the issues of potential terrorist attacks. We don't feel that this particular license ensures the protection of our members, and that based on the FBI having detained potential suspected terrorists after the September 11th terrorist attacks, some of those suspected terrorists had obtained a license to haul and transport radioactive waste.

Further, some of our members live just along the transportation route and could be impacted by a potential accident on their way -- on the shipment's way to the facility or simply by devaluation, again, of their property, which is supported by case law in New Mexico.

We have alleged in our affidavits that certain of our members enjoy recreational activities in and along the Great Salt Lake and to the extent that this material will be transported right next to the Great Salt Lake -- and we are also concerned about possible radioactive materials migrating into the Great Salt Lake.

The Great Salt Lake is a public trust resource that's managed by the state of Utah and, therefore, owned by its citizens. So that's another basis for granting standing and the petition to intervene.

Another area that was alleged in the affidavits is potential exposure to air emissions, you know, be that from a canister breaching during the transportation of this material and the handling of it on-site or potentially through an earthquake that could occur out at the facility, that materials could migrate off-site through the air dispersion and impact our members.

I think, really, though, the heart of this gets into if we are not granted standing in this proceeding, who else will be? You know, our organizations were founded specifically for the purposes of questioning and dealing with issues related to toxic and nuclear waste in the state.

You know, in National Parks and Conservation associations, that was the key part of their decision. And I'll read from that. It says, if a plaintiff cannot meet the first standard, meaning that of personal injury, standing may still be established for important public issues if no one else has a greater interest in the outcome and that the issues are unlikely to be raised at all unless that particular plaintiff has standing to raise these issues.

I think that clearly demonstrates the situation that we are in right now. You know, we are virtually the only people that are challenging this appeal.

The Air Force and the Rocky Mountain Interstate Compact -- you know, they are squabbling over taxation issues about transporting waste to the Envirocare location. They are not dealing with some of the more substantial matters that we laid out in our appeal.

And so, therefore, we clearly are the parties that have the most substantial interest in ensuring that this license was issued properly and does not jeopardize the safety and well-being of our members and the public as a whole.

One of the other issues to consider there is if we are not granted intervention, you ought to have an adversarial hearing. And that's one of the things that the courts have clearly requested, is that there be adversarial parties to ensure that the legal issues being challenged are clearly flushed out.

And then, finally, getting into the point of issues that are unique and of great public importance.

It was determined in the case filed by the Sierra Club and the Chemical Weapons Working Group against the Utah Division of Solid and Hazardous Waste that the chemical weapons incinerator posed such a great and enormous risk that simply in the public's interest that case should be litigated.

Originally the Sierra Club was denied standing, but upon review by the Appellate Court it was remanded back and they were, in fact, granted standing.

Some of the reasons for that was because the facility was very unique in the sense that, you know, it was the first chemical weapons incinerator full scale to operate here in the Continental United States.

What they looked at was the previous history, which are two of the prototype facilities that were built before this, both of which have released chemical warfare agents into the atmosphere and had significant design failures and problems with the facilities. The courts felt that with that history in place that then granted a basis to ensure that that particular facility did, in fact, protect public health. The only way to ensure that that could be done is to allow the Sierra Club standing to raise

those particular issues.

I think we should look at Envirocare's current proposal. We have many of those same issues. There has been, prior to this, six commercial radioactive waste landfills that have been licensed in this country. All six of those have had problems with leakage and migrating radioactive materials. Four of them are now closed.

You know, we have grave concerns that this may be following into that same pattern and, therefore, given that we only have two operating commercial waste facilities in this country right now -- this would make the third -- this is an issue that is of extreme public importance and should be litigated and should be brought before this board to ensure that we don't repeat mistakes that were made in other facilities.

I think another issue that makes this decision unique and critical, and deserves to be heard before the board, and is a reason for granting standing, is just because some of these issues are new and unique to the board. Despite Envirocare's arguments, the board has not heard the full evidence that we are going to put before you. The proceedings on the containerized A class B and C waste was a decision made by the Executive Secretary. The board was not involved in the issuance of that license.

The reason that we are coming here is to challenge that license and whether it should have been issued. You know, we do not feel that it is protective of the public health and we would like to put evidence to that effect before this board.

And, I think, given the history of how the license was first issued, those concerns should be aired to ensure that there is a fair proceeding, that more eyes look at this particular proposal than just the Executive Secretary, and the appropriate body to do that is this particular board, and to date you have not seen that evidence.

The response specifically to a couple of the claims that Envirocare makes regarding standing. They would like the board to travel down the path of the Nuclear Regulatory Commission's interpretation of standing. And I think anyone who has worked in the state on standing regarding the private fuel storage proposal knows that the NRC standings are fairly atrocious for the standing issue. In particular, it's inappropriate because that's not even where the basis for standing comes from. Envirocare argues that it comes from the Atomic Energy Act, and that's just simply not the case.

You know, as we were looking at it, the standard for -- seems to have come from a 1981 Model State and Administrative Procedures Act, which encouraged sites to have a streamline process, and that's where the issue of standing was coming from when it was adopted by the state and then also by -- incorporated by this board.

And I think when Envirocare makes the argument that, well, because Utah is an agreement state, therefore, we must -- this board must interpret standing the same way that the NRC has done it, that's misinterpreting what that agreement state statute is.

If you go back to the Utah code, where they talk about having a regulation that's more stringent or that, you know, the state cannot adopt a regulation that's more stringent than the Federal unless there is, you know, criteria established as to why it's in the public interest, that's talking about sources of ionizing radiation and it's talking about agreements that the state holds with Federal regulatory agencies.

Standing has nothing to do with sources of ionizing radiation, therefore, it would be inappropriate to even try to interpret standing in the same way that the Nuclear Regulatory Commission has.

And as you start to get into the cases that Envirocare cites, they are all very nebulous as far as relating to this particular proceeding before the board and so, therefore, I think it's most appropriate for this board to disregard those NRC cases because they simply don't apply to this proceeding.

Envirocare claims that we are not the most appropriate party to bring this proceeding. They said that possibly workers or those involved with emergency response would be better suited to raise these questions before the board.

Two responses. Simply, they are not here and -- again, we were incorporated for the purposes of ensuring the protection of public health by reducing toxic emissions and ensuring that nuclear waste isn't dumped in Utah.

You know, I think when workers are asked to bear the burden of raising these concerns before the board -- think about the position that they would be put in. They would ultimately be compromising their employment at that particular facility if those were the only folks that we were -- were allowed to have standing in a proceeding.

You know, already on a simple matter of trying to form a union, employees were fired out of the Envirocare facility, reinstated by the National Labor Relations Board.

But what I think it does is creates a situation where -- you know, look at the chemical weapons incinerator. You have individuals who raised safety concerns there who were then terminated. That's a difficult position to put employees in, but that's what Envirocare would ask you to do, is only allow workers at the facility or, you know, emergency responders to have standing in these proceedings.

I think one of the things that is important to understand in determining standing is what's appropriate to bring before the board right now. This is not an evidentiary hearing when you grant standing; it's to look at whether or not we have alleged issues that may substantially affect our legal interests. It's not whether or not they have already occurred, it's not whether or not our arm has already been cut off and that we have been harmed, it's that we may be harmed and that the issuance of this license may lead to a future action that results in that harm.

Envirocare would ask you to hold a standard that says we have to show actual harm today, and that's -- impossible and that goes against the spirit of why we are even here, which is to ensure that harm does not occur.

In a case of Lujan versus the Defenders of Wildlife, they actually dealt with this issue, and I'll read a segment from that.

And it says at the pleading stage, general factual allegations of injury resulting from the defendant's conducts may suffice to establish standing.

In response to summary judgment motions, plaintiffs can no longer rest on mere allegations but must set forth by affidavit or other evidence the specific facts which will be taken as true for purposes of summary judgment.

Now, we haven't filed a summary judgment, we are simply in the pleading stage of asking for standing and intervention to get into the merits of this case.

So Envirocare submitted affidavits, hired a few folks to testify on whether or not property values had decreased, whether or not materials could migrate into the Great Salt Lake from their facility.

That's really irrelevant at this point in the process. That's something that we'll get to in the merits, to shake out those issues. And it would be inappropriate to base your decision on those affidavits as being the word of God, if you will, because we are not going to have an opportunity in this proceeding to cross examine those witnesses and it's simply not the point. Again, this is not the evidentiary part of the process; it's simply to say, have the allegations that have been made either in the appeal or in the affidavits lead to the impact of substantially affecting our legal interests.

And we have clearly set that forth in our affidavits in our appeal and, therefore, you know, would ask that you grant intervention so that we can bring the full merits and the full evidence of this case before the board.

And that's all I have, if you have any questions.

Mr. Nelson: Cathleen.

Ms. Gilbert: Jason, is the relief, then, that you are seeking today that we grant you standing to intervene? Is that what we are voting on?

Mr. Groenewold: Correct.

Ms. Gilbert: And if you were granted that, then you would appeal and present evidence. That's what you have talked about, evidence on the merits.

Mr. Groenewold: Correct.

Ms. Gilbert: Is this new evidence that you would be presenting?

Mr. Groenewold: Some of it would be supplemented in the record, and we have until the 8th to do that.

Some of it would be expert testimony that would be heard by this board in support of the claims that we have made.

Ms. Gilbert: And I realize the relief you are seeking today is the right to intervene, but can

I just ask, because I'm curious, why some of the older evidence wasn't presented at all those hearings that we held?

Mr. Groenewold: Some of the evidence -- some evidence was, some of it was not. Out of the evidence that was, we would like the board to consider that evidence because we do not believe that the Executive Secretary weighed that evidence properly and that it was a basis for denying the license to Envirocare. And so that's the purpose for appealing the Executive Secretary's decision, is to say based on what was presented and what we are supplementing now, that this license should not have been issued.

Ms. Gilbert: Okay.

Mr. Nelson: I want to ask a potentially tough question.

If personal injury is one -- admittedly, according to your document, you are not the only -- but is one of the ways in which to gain standing, you know, I'm wondering -- I have a sense that some of the material here is pretty vague, you know, ground water discharging into the Great Salt Lake. Can you give me some specifics about how that might happen? I want to get a better sense that -- if you are claiming injury -- that there is some reasonable expectation that you are going to present some evidence that substantiates that injury. I mean, I am not trying -- I don't want to try the case in advance, but I am left a little unsettled.

Mr. Groenewold: Sure. And just to be clear, that, again, is not the purpose of this proceeding today, is to put on our evidence, but to get to some of those issues that we are concerned about.

You know, look at the Envirocare facility and location to the Newfoundland drainage area next to the Great Salt Lake. After the floods of 1983 there was a purchase made by the state of Utah and Governor Bangerter to buy pumps to drain the Great Salt Lake and remove water from that system. It was then dumped into the Newfoundland drainage area.

Well, what they found in the process of doing that is the lake was recharging faster than they could even pump the water out because the ground water underneath that area goes and recharges back into the Great Salt Lake.

So that would be one issue that we are supplementing the record on right now, and definitely we'll be putting evidence to that effect before this board as we get there.

I think, looking at the transportation routes and how close they are in proximity to the Great Salt Lake, that's a huge issue. You know, if there were an accident to occur as that material was being transported to the Envirocare site, you know, you have potential materials migrating into that facility.

And, again, we are going to put on evidence before this board about accidents that have occurred in the past, breaches of canisters that have occurred, radioactive materials that have migrated outside of their containers.

And we fully would like the opportunity to do that. In order to get to that point of the process we need to be granted intervention.

So before -- one of the decisions before this board today is if we have made allegations that may impact our legal interests -- and when we look at the Great Salt Lake -- again, that's a public trust resource. So that's something that ensures -- you, I, everyone here in this room, has a legal interest in ensuring the integrity of that waterway and that system.

And so if you find that, yeah, in fact, something could happen by the issuance of this license that may impact that resource and our legal rights, then you have to grant standing so that we can bring more evidence to that effect before this board.

Again, it's not up to you to judge those issues, whether or not, based on my two-minute recount of that, if that's accurate. And, in fact, you know, I wouldn't be the expert before the board on that particular issue. And that's something that Envirocare has tried to draw out in their deposition, is assume that I, personally, am the whole body of knowledge and expertise on the issues and the claims that we raise, which I wish I was.

Mr. Nelson: I guess my point is, is that if you are going to claim substantial injury I would want to have some reasonable expectation that we are going to hear, you know, some credible evidence that substantiates that.

Mr. Groenewold: Yeah. And we are supplementing the record with some of that material. And, again, that's what witnesses are for in those proceedings.

So, you know, as we get into some of those matters and claims that we lay out, you know, devaluation of property values, impact to members who live along the transportation routes, air emissions, ground water discharge, you know, we will be getting into that in the evidentiary portion of this proceeding. But unfortunately -- well, that's not why we are here today. It's simply to look at may our legal interests be substantially affected.

We have put forth affidavits claiming that -- you know, and it's -- again, going back to like this Lujan case, now is not the time to weigh that evidence or determine the factual nature of it. That's for the hearing itself, you know, and the request for agency action.

Mr. Nelson: Any more questions or comments for Jason?

Okay.

Mr. Groenewold: And so, yeah, I guess I would maybe like to reserve an opportunity to comment after Envirocare is done, or the Executive Secretary, if they choose to make arguments on this particular point.

And just to remind the board, that it's one of the three standards. You know, if you find that we have met any of those criteria, that's a basis for granting standing and granting our petition to intervene.

Thank you.

(Recess taken.)

Mr. Nelson: Okay. Not to keep anyone from speaking and saying what they felt they need to say, but, please, in the interest of time, let's try to be brief.

We have heard from Jason. Is there anyone else from FAIR, the FAIR organization, or Legislative Watch?

Okay. We would like to hear from the Executive Secretary, then.

Ms. Lockhart: My name is Laura Lockhart. I am with the Utah Attorney's General Office representing the Executive Secretary.

The Executive Secretary is not taking the position on intervention generally, but I wanted to make one clarification with respect to Section 63-46b.(12) upon which FAIR is -- placed partial reliance. It's the Utah Administrative Procedures Act, which I will probably call UAPA, whether I intend to or not. It's a pretty complicated statute and our interaction with it is also fairly complicated, so I don't blame anyone for misunderstanding it. But his understanding of the procedure is not the same as mine and I would like to clarify what I believe to be the case.

Unfortunately, you have to go back a little bit to when UAPA was passed to really understand why UAPA Section does not apply.

When UAPA was originally circulated we realized that -- we being the Department of Environmental Quality -- realized that we would not be able to implement all of the trial-type procedures for every kind of decision that we made; it would just be completely impractical and stop us.

So what we did was exempted from UAPA the initial decision made by the Executive Secretary in those situations. Following that initial decision by the Executive Secretary we gave an opportunity to interested persons, both the regulated party and other interested persons, to challenge that, challenge the decision of the Executive Secretary. And the challenge would take place in the board. The board would be the ultimate decision-maker.

The -- the -- that proceeding would be a de novo proceeding, which means essentially that you are sitting in the same shoes as the Executive Secretary was when he originally made the decision with respect to the issues raised in the proceeding.

Their Section 63-46b.(3) states that where applicable law permits persons other than the agency to initiate adjudicative proceedings, that can be done by request for agency action. That is what we have put into our rules.

If you'll look at 16 -- R313-17-6, it said that challenging the Executive Secretary's initial request for -- excuse me -- initial decision is done through the procedures in 6346B-3. 6346B-12 is the section that Mr. Groenewold was relying upon. That section is for agency review. It states that where the agency's rules or statute provide for agency review, you can file that way.

We do not have rules or statutes that provide for agency review. Typically agency review is the review by a higher authority within the agency of the lower decision -- of a lower agency

trial-type decision adjudicative decision.

The -- I just wanted to point out also that we have specifically stated in our rules that agency review is not available under R313-17-12. It says, no agency review under section 63-46b.(12) is available. That's consistent with our understanding, that we have to at some point have an adjudicative proceeding and that there is no agency body that is higher than this board to make those decisions.

So that's all I wanted to address.

Mr. Nelson: Can I ask a question, if I dare?

Ms. Lockhart: You bet.

Mr. Nelson: Without respect to the merits of what anybody has written in terms of their pleadings, do you have any guidelines that you would wish to offer for a -- determining standing?

Ms. Lockhart: Well, the determining standard is contained within the Utah Administrative Procedures Act. It's -- sorry. It's Section 6346B-9 and I --

Mr. Nelson: All right. That is cited in the initial pleading.

Ms. Lockhart: Right.

Mr. Nelson: By -- I just want to know what that says, I guess, is what I'm saying.

Ms. Lockhart: I'm afraid that I don't have a great deal of insight to add to that particular language.

Mr. Nelson: Could you read just read it for me?

Ms. Lockhart: Sure, I can do that.

It says that somebody filing for intervention has to file a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding or that the petitioner qualifies as an intervener under any other provision of law.

Mr. Nelson: Okay.

Miss Lockhart: So the key words are legal rights or interests are substantially affected.

Mr. Nelson: Okay. That's kind of what I'm trying to get at.

Ms. Lockhart: Any other questions?

Mr. Nelson: No, doesn't look like it.

Thank you.

Mr. Holtkamp.

Mr. Holtkamp: Thank you, Mr. Chairman. And I will be brief. It's been long for all of us.

First of all, I would urge you to take a look at our submittals on these issues. We have responded to most everything that Mr. Groenewold mentioned and I just want to hit some high points.

The -- when you cut through all of the statutory requirements, the Utah Supreme Court case and the Lujan decision at the Utah Supreme Court, the issue, when you are talking about the standing of someone to intervene in this proceeding, is whether or not they, the petitioners -- and when I say petitioners I am referring to FAIR and whoever else has petitioned for standing -- whether or not they have suffered an injury.

Under the guidelines established by the Utah Supreme Court, first of all, they have to show that there is a demonstrated actual injury, all right? The Utah Supreme Court has said repeatedly that a mere allegation of an adverse injury is not sufficient. And all that we have are allegations, generalized claims.

Secondly, the injury must be distinct and palpable. That, again, is language from the Utah Supreme Court not general, not imaginary, not hypothetical, not speculative, but it has to be distinct and palpable.

And third, the injury has to substantially affect their interests. The standard is not may substantially affect interest, as Mr. Groenewold would have you believe, but it is substantially affecting their interest.

They have made a number of general allegations that I just want to address briefly. And before I do so, I want to make the comment that standing should not be granted to a party that promises to introduce evidence about injury later.

The requirements established under the statute and the courts are clear; they have to make specific particularized allegations, not simply promise that, well, we are going to submit some

evidence later on and you've got to let us in because we have evidence you might want to hear. They have to tell us what that it is now and they haven't done so.

With regard to property values. General, vague allegations in affidavits. They fly in the face of the history of property values in Tooele County.

And in that regard I have another thing I would like to pass out. This, again, is a letter addressed to the board, but I'd like to have the board have it, I guess, through us, from the mayor of Tooele City who, when he learned of this particular issue, felt it important to respond.

This is in the petitioner's last response or reference to a New Mexico case which they rely heavily on. That New Mexico case involved the city of Santa Fe, which condemned a portion of a large parcel of property for a highway bypass in order to transport high-level nuclear waste from Los Alamos National Laboratories to the waste isolation pilot project near Carlsbad.

That case stands for the proposition that the value of the remaining parcel was diminished because of the proximity; it was right next to a highway, in fact it, was bisected by a highway that was carrying and was devoted to carrying high-level nuclear waste. That was a very particular, specific factual circumstance, far from the vague allegations that have been raised in FAIR's complaint.

And I think that it probably behooves us to take a look at that case too. So you can understand the distinction.

And I should also note that the standard that the New Mexico Supreme Court used in that case is different than the standard that the Utah courts used with regard to public perception.

The Utah courts hold to the standard that if value of a property is diminished according to public perception, that public perception has to have a reasonable basis. There has to be a showing that there is an actual cause and effect relationship, not mere speculative allegations.

There have been claims raised about transportation. Again, they are very vague. We did submit -- for the record, you have, I think, in your packet as an attachment to our latest submittal a copy of the deposition of Mr. Groenewold to the court.

That was in response to his offer before this board to make statements under oath with regard to FAIR. And in that deposition we asked him the basis for his concern about transportation safety.

He referred to a book in his possession, which he could not recall the title of, but it was nothing to do specifically with (inaudible), there were no studies, no reports, nothing of that kind.

The same thing holds true with ground water contamination. Mr. Groenewold admitted under oath that he had not reviewed the air monitoring data at the site but rather had just sort of a speculative notion that, gee whiz, if we put radioactive waste out at Envirocare and the wind blows, somehow that radiation is going to be scattered because of the wind blowing.

The land ownership issue was considered by the board, decided by the board and after that decision FAIR did not appeal it. We believe as a matter of procedure and law they have waived their right even to raise that issue.

But we do not believe that it is sufficient for FAIR to claim that, well, as taxpayers we might be required to pay taxes in order to support the state takeover of remediation or monitoring or closure efforts at the site should Envirocare not be there.

The law is very clear on a state and Federal level, that just because you are a taxpayer and you don't like where your taxes are going, that does not give you standing.

And they also complain about notice and comment on alleged deficiencies. I believe that, frankly, is somewhat disingenuous. The citing process, the land ownership exemption process and the license process were subject to exhaustive hearings that went on longer than this one, ad nauseam, as it were. Every comment was dutifully recorded. Those comments, the substance of those comments have been provided to the board. I fail to see where there has been any deficiency in the opportunity of these folks to make their case.

I think what we really have here is a situation where a group disagrees with a decision of the Executive Secretary, which is their right to do. Just because they disagree, just because they don't like it, just because they have had experience with chemical and biological weapons incinerators, which may or may not have been good, does not, by right, entitle them to participate in this proceeding.

They certainly had many forums that they can raise their grievances. This is not the proper

forum without establishing palpable distinct injury.

I remind the board that even though the license has been issued by the Executive Secretary, and even though there is a process that we are engaged in right now on review of that license, this still is a legislative and gubernatorial review process that needs to happen before the waste can be accepted at the site.

And that certainly is a forum that the legislature specifically set up so as to take into account the kind of generalized, frankly, political, philosophical, or however else you want to term it, grievances that opponents might have. But here you have to have a showing of distinct palpable injury, as the Utah Supreme Court has said, not mere allegations of some generalized injury. And their pleadings and submittals speak for themselves.

Then I think that's all I have, unless there are any questions. I think I --

Mr. Nelson: Questions or comments for Mr. Holtkamp?

Dianne.

Ms. Nielson: A question on page four of your October reply to the --

Mr. Holtkamp: Yes, I have that right here.

Ms. Nielson: The second paragraph of your point three.

Mr. Holtkamp: Yes.

Ms. Nielson: The statement -- and I am assuming you wrote this. This statement that you make is that as a general matter Utah courts have rarely granted standing under a matter of greater public interest prong.

Recognizing that, do you disagree that that's an appropriate standard to consider?

Mr. Holtkamp: Yes. Well, to answer that question, Dr. Nielson, in the middle of that paragraph we quote from the National Parks decision of the Utah Supreme Court.

We say, however, the court also underscored the dispute must, quote, raise the statutory or constitutional issue of substantial public import, close quote.

We do not believe that these issues are a statutory or constitutional issue of substantial public import. There is no question about the statute. There is no constitutional claim. And the Utah Supreme Court stressed that that is why it has only been sued on a limited basis. The court recognized that it has to be something really important, that involves a statute or the constitution, and we are not dealing with that here.

Ms. Nielson: Thank you.

Mr. Nelson: Rod.

Mr. Julander: If this question is out of order, call me out of order.

Mr. Holtkamp: Only he can do that.

Mr. Julander: You were accused of throwing a slap suit on Sierra Club. Could you comment on that?

Mr. Holtkamp: I will comment as I can. I am not involved in any way with Sierra Club on behalf of Envirocare or anyone else.

My understanding is that there is a lawsuit involving Miss King currently before the state court. It is not a slap lawsuit. I really shouldn't comment on what I know about the allegations because they are literally third-hand, but my understanding is that it has to do with public comments that were made, not an attempt to keep the Sierra Club from commenting on regulatory actions but rather the claims, as I understand them, with the qualification -- and this is third-hand -- and Miss King is probably in a much better position than I to address it.

It's been characterized to me as a defamation lawsuit. Let me just put it that way. But that's all I know about that. I am not counsel in that case and have nothing to do with it so -- I can certainly, if you would like, Dr. Julander, put you in touch with counsel if you wanted to talk to him.

Mr. Julander: No, that's okay.

Mr. Nelson: Any more questions?

Cathleen.

Ms. Gilbert: So do you disagree with legal counsel for the Executive Secretary, that the pivotal legal standing is that the petitioners' rights are -- the petitioners' legal rights are substantially affected?

Mr. Holtkamp: No. In fact, that's something --

Ms. Gilbert: I know it's cited in your brief, but as subpart c you have got other things.

Mr. Holtkamp: It's complicated. I guess if it wasn't complicated I would not be pretending to know what I am doing. But the substantial effective test is the key of the statute, but the court has added these other things. But we don't believe that they even meet that test. There is no substantial effect.

Ms. Gilbert: Okay.

Mr. Nelson: Well, does anybody have anything new that they want to say?

Jason.

Mr. Groenewold: Yeah. Just to clarify.

I know that this provision of the code was incorporated by the board's rules and, Mr. Chairman, you had asked about section 63-46b.(9), which I do have a copy here.

The only nuance that actually is a little bit different, and I think it's important to point out, is that by statute it says, presiding officer shall grant standing -- or, excuse me -- presiding officer shall grant a petition for intervention if the presiding officer determines that the petitioner's legal interests -- and this is the word in the statute -- "may" be substantially affected.

Now, I think the reason why that nuance is important is because it is a little bit different than "are." And "may" infers an action to take place in the future.

What we are talking about with Envirocare's proposal is something that is coming down the pipe. You know, based on what Envirocare was arguing just now, saying that, you know, we have to show a distinct, palpable injury right now, today, that would be impossible and that's, in fact, what we are trying to prevent, are those injuries from occurring.

It would be extremely difficult to redress those injuries after the fact. So what we are asking for from this board is an opportunity to go back and look at the evidence that was presented during the hearings, plus whatever we are supplementing the record with to determine whether or not this license is, in fact, protective of public health. And so if our interests may be affected and we have put forth the basis how they very well could be affected, then standing should be granted.

As far as going back to the Lujan case, that's exactly what it deals with. Again, this is not the time to put the evidence forward; it's the time to determine if our interests may be affected and that's then, once we get to the evidentiary portion of this proceeding, where you would weigh the evidence that we put forth versus what Envirocare would put forth versus what the Executive Secretary would put forth, and based on that weight of the evidence make a decision as to whether or not the license is protective.

As far as whether or not we waived our right to deal with the transportation issue, that simply would have been premature, to have challenged that decision without a license being issued, because if no license is issued, obviously that waste isn't going to be transported. So that decision on the citing criteria didn't even become effective until the Executive Secretary made its decision on the license.

Furthermore, what we will be discussing is whether or not those transportation routes impact our members and that, again, would come in the evidentiary portion of the hearing.

Finally, I would again stress that what it is is looking at one of three criteria; either showing that your legal interests may be affected by personal injury -- that's something that the courts have established. Whether or not this is an issue that's in the public interest and should be resolved based simply on it being such a significant, important matter. And I think, given the history of radioactive waste disposal in this country, it's extremely important that we go back and look at why it is that all of these facilities have had problems containing the materials that are disposed of in those land fills. You know, are we going down that same path that other facilities have already gone down and making those same mistakes. That's something we will be putting forward.

And then, finally, who better to bring the issue, if not the public interest organizations that are actively organized in the community representing the interests of our membership to protect the health and well-being of our members and of the public? Who gets standing? You know, is everyone going to be barred access to the courts in these judicial proceedings if those interests and those individuals in our community that are coming together specifically around these issues aren't allowed access? That's something that was decided in the National Parks and Conservation Association. It was further upheld in Sierra Club versus the Division of Solid and Hazardous Waste, and it's the basis by which this board should also consider granting standing and our petition to

intervene.

Thank you.

Mr. Nelson: Anyone else wish a final word?

I would like to ask Fred a question, if Mr. Nelson will dare venture to advise us.

Do you have any thoughts that you are willing to share as to any guidance you wish to give on what should constitute a basis for standing?

Mr. Fred Nelson: Let me see if I can just define for the board what I think the decision is that needs to be made.

Mr. Nelson: Okay.

Mr. Fred Nelson: The board needs to decide whether or not to grant FAIR or Utah Legislative Watch, or both, standing in the proceeding.

My understanding is the other individuals are not here personally to be represented and they are part of the FAIR group, and Utah Legislative Watch is here and represented.

In the materials that you have been provided there are specific representations by FAIR and by Utah Legislative Watch as to what their interests are. And under the rule, the language that has been referred to is a determination by the board that these persons, or organizations, in this case, these two organizations have legal rights or interests that are substantially affected by the proceeding.

The best law that I would recommend that the board consider is three opinions of the Utah Supreme Court because -- three opinions of the appellate courts in Utah. There are -- any appeal from decisions of this board would go to the Utah Court of Appeals and potentially ultimately to the Utah Supreme Court.

Those three decisions -- there are two in 1993 and there is one in 1998, and they have all three been referred to in this proceeding.

The two 1993 decisions, the National Parks case and the Sierra Club case, that dealt with a challenge for the Solid and Hazardous Waste Board appealing a licensure for USPCI. In those two decisions there are outlined what the courts would accept as standing. And there are three windows that the court would let parties into a process.

The three windows have been referred to; the one window is, has a party suffered some distinct and palpable injury that gives a personal stake in the outcome of the legal dispute. Is there a causal relationship between the issues that have been raised and the injuries that are represented.

It's also clear that the court has said that a generalized statement that could equally be brought by any citizen is not a basis for meeting that requirement.

So as you look at the representations that have been made by the two organizations, if you are going to find a specific substantial injury to legal -- that legal rights or interests are substantially affected by the proceeding, one window to go through would be that window of which we find that what they have represented constitutes a distinct and palpable injury that gives a personal stake in the outcome of the dispute.

Now, even if the board doesn't conclude -- or even if the board concludes that there has been -- that standard has not been met, the board still could find that there is standing on the basis that there is no one else with a greater interest in the outcome and the issues need to be raised and these parties represent that group.

Even if you don't find that exists, there is a third window that the board could go through, and that is to say that the issues that are raised by the two organizations constitute issues of significant public importance that it warrants them being granted the ability to review them.

In the National Parks case the Supreme Court concluded that the issues raised in that case by those parties, even though there was just a generalized statement, constituted something that would warrant the court to review it.

In the 1993 Sierra Club case, where the challenge was given to the USPCI licensure, the court concluded otherwise. They said, no, they have not raised issues of significant public importance and we are not going to hear it because there is no injury that's been established specifically and we don't conclude that this is specific to -- of importance that we want to hear it.

In the most recent case, the challenge on the incinerator case before the Solid Hazardous Waste Board, the court didn't even address the issue of distinct and palpable injury because it said we concluded that the specific issues in that matter constitute issues of significant public importance.

So the issues that have been raised in the pleadings by FAIR and by Utah Legislative Watch, issues of concern raised with respect to compliance with the licensure process, issues relating to risk, whether there has been proper risk assessments done, whether there is a violation of land ownership exemption by the exemption the board has issued, whether that violates the law, generator site access program being in place -- not being in place at the time, whether it is a violation of the compact; those kinds of issues are the issues that the court would look at and say, are these issues that have been -- that should be considered that are considered issues of significant public importance that we should grant standing.

So at this point the board needs to evaluate whether or not the specific injuries constitute specific injury to qualify under the specific standard and it's not just a generalized statement.

Number two, whether the board believes that there is no one else that has a greater interest in that.

And then third whether the board wants to consider these things because they constitute issues of significant public importance and the board believes they should review them at this point.

That's my best shot at a very difficult, complicated area of the law that is regularly argued and -- and it is -- it is in many cases very fact-specific because you look at the specific representations of the parties and try and apply it to that standard.

Mr. Nelson: Greg.

Mr. Oman: Mr. Chairman, according to my understanding, then, we are on number five on the agenda. We have done number c and d. We have put in abeyance the vote on c.

Before we determine d were we going to determine c also?

Mr. Nelson: The motion, I believe, is that we were going to determine standing.

Mr. Oman: Standing, then.

Mr. Nelson: (Nods head.)

Mr. Oman: May I throw a question to Fred?

Mr. Nelson: Sure.

Mr. Oman: If the board votes to basically disboard Mr. Hunsaker from voting on these kind of issues, does that affect his standing on the board with anything else that the board deals with in their usual business or just with Envirocare kind of things?

Mr. Fred Nelson: Just deals with this particular petition.

Mr. Oman: Just this. That's it.

Mr. Fred Nelson: Right.

Well, let me make sure I understand your question. It has -- the board vote on disqualification of Mr. Hunsaker would affect any matter having to do with this petition for review of the B and C license, so not only the petition to intervene but the merits of the case.

Mr. Oman: Okay.

Mr. Nelson: Cathleen.

Ms. Gilbert: I make a motion that we call a vote.

Mr. Nelson: Okay. And you make a motion be called --

Ms. Gilbert: Call for a vote on the determination of the petitioners' intervention request.

Mr. Nelson: Intervention request. Okay.

Do we have a second?

Mr. Julander: I'll second.

Mr. Nelson: Second by --

Mr. Julander: I can't word it but I'll second it.

Mr. Nelson: Okay. So we have a second.

Do we have some discussion? I would assume there would be some but --

Ms. Nielson: Yes. A clarification as to what a vote of yea or nay would be, based on the way the motion was worded.

Mr. Julander: That was my --

Ms. Nielson: I want a clarification.

Ms. Gilbert: A vote of yea would mean that they were in favor of granting intervention, standing, to petitioner.

Ms. Nielson: Thank you.

Mr. Nelson: Okay. That's everybody's understanding.

Ms. Nielson: And it would be granting --

Ms. Gilbert: Yea or nay, that they would reject that.

Mr. Nelson: A nay vote would be not in favor.

Ms. Gilbert: Okay.

Ms. Nielson: And was that to include FAIR and Utah Legislative Watch --

Ms. Gilbert: Right.

Ms. Nielson: -- not any determined -- not granting standing to the individuals who are listed or Citizens Against Radioactive Waste?

Ms. Gilbert: That's right.

Mr. Nelson: Okay. Everybody is on board with that?

Mr. Bradford: I have one more question for Fred.

Can you give me a little clarification? I am still a little foggy, I think, on the idea of the policy decision, which is the legislature and the governor versus the window that you talked about of significant public harm, which is kind of a vague thing. How do you separate those two?

Mr. Fred Nelson: Well, the determination of the court is not -- it's on the basis of whether or not legal issues have been raised of significant public importance. And that's the phrase they use. Whether there ought to be a review of the issues and -- well, I'll give you an example.

The court, when it ruled that this was not a significant issue in the USPCI case, took it by issue and said, for example, they have raised an issue as to the emergency response capabilities and we think that there are processes and ways to deal with that that this court shouldn't get involved in.

On the other hand, in the National Parks case and USPCI case, they concluded that the issues raised on risks associated with the incinerator were significant public issues that warranted granting standing.

So if you are going through that window, there is a lot of discretion in what the board wants to do.

Mr. Julander: Yes.

Mr. Nelson: You don't want to discuss it more or do you just want to vote?

Mr. Julander: It didn't look to me like there --

Mr. Nelson: I would like to express a few thoughts if nobody has an objection. I don't want to belabor this.

Personally, I think that -- well, I'll just say a few things.

With respect -- my understanding is the Executive Secretary based a license on -- based on a technical review and I'm -- I want to be sympathetic, but I'm a little -- I'm a little disappointed that -- at the vagueness of some of the allegations. And I think I telegraphed that last summer in board meeting.

Having said that, I'll just -- probably just leave it there. I'll just leave it there.

Okay. Now, we want to call the question?

Mr. Julander: Yes.

Mr. Nelson: All right. Shall we have a vote?

Rod Julander.

Mr. Julander: Aye. I vote aye.

Mr. Nelson: Okay. Tom.

Mr. Chism: Nay.

Mr. Nelson: Kent.

Mr. Bradford: Nay.

Mr. Nelson: Barbara.

Ms. Reid: Nay.

Mr. Nelson: Dianne.

Ms. Nielson: Aye.

Mr. Nelson: Yes.

Gary.

Mr. Edwards: Aye.

Mr. Nelson: Cathleen.

Ms. Gilbert: Aye.

Mr. Nelson: Greg.

Mr. Oman: Yes.

Mr. Nelson: Karen.

Ms. Langley: Nay.

Mr. Nelson: I have six ayes and I have one, two, three, four nays. It appears that FAIR and Utah Legislative Watch have been granted standing in this process.

Mr. Holtkamp: Mr. Chairman, could I request that the board issue written findings? We have an eye towards the possibility of Court of Appeals considering this and it would be very helpful if we had a written basis for the board's decision. I would like to make that request.

Mr. Nelson: Okay. We have that request.

Fred, can you tell us what that means?

Mr. Fred Nelson: Yes. I -- let me try and tell you what I think it means.

When the board makes a decision -- and this one is a particularly important decision -- it should issue a finding and the basis for the finding. And so the vote of the board is to grant intervention for those two organizations and I would prepare a draft finding for the board to consider. And in that regard I would need some help from the members of the board who at this point I think need to express their basis for concluding why they think intervention should be granted and then I can try and boil that down to a pleading that you can approve as a board on a vote of six to four.

Mr. Nelson: Okay. Rod.

Mr. Julander: Can I begin?

Mr. Nelson: Do you want to do it now or --

Mr. Fred Nelson: Now would be preferable because I would need to reduce that to writing by the next meeting.

Mr. Julander: While our memories are still fresh.

Mr. Nelson: Let me ask, for clarification purposes; could I, for instance, send you a letter or e-mail within the next week?

Mr. Fred Nelson: You could.

Mr. Nelson: And that -- does that become just distilled in your letter or does that become a matter of public record or --

Mr. Fred Nelson: It would become a matter of public record and I would -- it would be handed to the board when I prepared the draft. I would just prepare a draft based on your comments or your written, and then the board would have to approve that finding.

Mr. Nelson: Okay.

Mr. Julander: Let me say why I voted yes.

Three criteria to grant standing. One of them is a significant public importance and the issue that is so important that the legislature, when they passed it, wants it to go back to them and back to the governor I think almost by definition is a significant -- makes it a significant public issue.

But beyond that it -- in my opinion it is one of the significant issues. And as I hear people in the community talk, they talk about this a whole lot, a great deal, and that makes it a significant issue as well.

I also believe that there is nobody with greater interest to present this than the two organizations that are public interest organizations and designed -- particularly one of them designed just for this issue.

That was the basis of my decision.

Mr. Bradford: I'll comment. I agree with Dr. Julander on the issue of significant public interest and importance, but I -- I came down on the other side in that if it's -- if it is specifically a policy issue and we are looking at the technical issues as to how the Executive Secretary came to his decision, then I didn't see any technical issues that were raised that would call it into question.

Mr. Nelson: Dianne or Barbara?

Yeah. I may write something down and flush it out and send it to you and let it be distributed. I voted reluctantly yes because I -- I have a sense that the organizations involved do have a great -- as great or greater public interest as any organization that may exist and that's, right now, really the thing that swayed my vote. And I am speaking for myself. I am going to be terribly concerned that on an evaluation of a technical license be supported by evidence of technical flaws

in the granting of the license. In other words, getting to the injury issue.

Mr. Edwards: And I voted yes primarily along the same lines as Dr. Julander. Representing the public health community, I feel that there is a significant public health importance and I put health in there, not just public importance but public health importance to look at the issue.

Ms. Gilbert: I also was -- voted yes for similar reasons to Dr. Julander, but additionally based on, Fred, your advice or your recap of that National Parks case that also said the generalized statement could constitute sufficient standing, whereas the injury didn't necessarily need to be there. And I thought that applied to this case.

Ms. Nielson: Mr. Chairman, if I might.

I voted yes on standing for Families Against Incinerator Risk and Utah Issues because I feel it is a significant issue of importance. And I also feel that the board is the appropriate place to consider the issue.

I would agree with the chairman that the merits of that case are yet to be heard fully and will be part of the appeal itself, the request for agency action, but I believe the issue is of significant importance and should be heard.

Mr. Nelson: Yes, Greg.

Mr. Oman: My feeling is the same thing, the third window, that's where I felt it fit.

But also the thing that entered my mind is I think the board needs to demonstrate to the citizens of the state. We want to allow the common citizen, that can fit into any of those windows, to take the process to the extent that it can be taken to express their opinions so that we -- when we make a decision, either it be yea or nay for them, the public will know that we have done all that we can do for them.

Mr. Nelson: Any more comment? Okay.

I guess now we have -- since we are going to be hearing the matter, we need to consider now the standing of Teryl Hunsaker. We have heard the arguments. Is there any discussion among the board prior to a motion?

Ms. Nielson: I'm sorry. Would it be appropriate to ask Mr. Hunsaker if he wants to join us again since he was part of this discussion initially?

Mr. Fred Nelson: That's fine. And if -- it probably would not be appropriate that he vote on this motion. He is expected to be here and to participate.

Mr. Hunsaker: What additional point?

Ms. Nielson: I would suggest, unless there is an objection from a board member, that we invite the commissioner to rejoin us at the table.

Mr. Hunsaker: I will just remain here. I will just remain right here. Thank you. I appreciate that.

Mr. Nelson: Okay. Questions, comments, discussion, or do we want to do that following a motion? I'll leave it to the board, some member of the board to make a motion.

Ms. Reid: I have a question.

Mr. Nelson: Yes, Barbara.

Ms. Reid: That is, we have talked -- discussed here about financial gain to Commissioner Hunsaker and I want to know, what is that gain? What money? How much? Millions, thousands, hundreds?

Mr. Groenewold: Would you like us to answer that? Is that --

Mr. Nelson: Are you addressing your question to them?

Ms. Reid: To whomever, yes, on who made that claim.

Mr. Nelson: In that case, whoever would like to respond, please do so briefly.

Mr. Groenewold: It falls into two categories; one, the financial contributions have been very substantial. It's been over \$1100, and that's personal.

More to the point, though, is the role as commissioner of Tooele County. Five percent of Envirocare's revenues is approximately 5,000,000 a year plus.

Ms. Reid: Right.

Mr. Groenewold: Which is pretty significant in the budget of Tooele County.

Ms. Reid: But how much will the B and C waste add to that?

Mr. Groenewold: That's a little bit, I think, yet to be determined. Certainly if you look at what other sites have been able to charge -- if you go to South Carolina or the state of Washington

and look at the fees that they have assessed on B and C waste, it's order of magnitude above what you get for class A, which is primarily above what Envirocare is. You are talking -- a little bit off the top of my head -- you know, a few dollars for class A versus 2 to 300 for B and C, in that ballpark. It would be definitely a significant increase in their revenues.

Mr. Julander: Mr. Chairman.

Mr. Nelson: Yes.

Mr. Julander: I would suggest that we have a motion before we continue discussion because if there is no motion there is no discussion.

Mr. Nelson: I agree with that. Yes.

Mr. Edwards: I make a motion that we not disqualify Commissioner Hunsaker, and I will explain that once there is a second.

Mr. Nelson: Okay. We have a motion to not disqualify Commissioner Hunsaker. Do we have a second for that motion?

Ms. Langley: I would make a second.

Mr. Nelson: Seconded by Karen Langley. Okay.

Since you want to have some discussion, go right ahead.

Mr. Edwards: Thank you.

I have been on the board almost as long as Commissioner Hunsaker has been. In that time I found him to be honest. I have found him to express at times that he does have an interest in Tooele County and the things that take place in Tooele County. I know he understands the microscope that he has been put under and I believe with that that the discussion and votes that he would make on this matter would be in the best interest of the state of Utah and not Tooele County or Commissioner Hunsaker.

Thank you.

Mr. Nelson: Okay. Any other discussion?

Yes, Rod.

Mr. Julander: I seldom agree with Terry on these issues so I am not particularly anxious for him to cancel my vote out on this item. In fact, I think it's fairly courageous just to have him and I sitting next to one another.

But as I listened to the discussion, as I have thought about that, I don't see a whole lot of difference between him and me. And if we -- if we exclude him, then I don't -- I would -- I would feel fairly iffy about staying on myself. As I mentioned, I have even worn a badge that says "vote green," so even wearing the badges, receiving donations as an officer of the democratic party, as the spouse of a state senator, I have certainly been tainted in that direction as well.

So my questioning was trying to get a clear picture that there is a difference in kind between his conflict of interest and mine and I didn't -- I didn't arrive at that so I would not -- I would support the motion.

Mr. Nelson: I'll make -- probably a good time for me to say my piece briefly.

I don't see that the economic well-being of Tooele County is decoupled from the economic well-being of the state of Utah. I don't see that a tax base to provide goods and services to the citizens of Tooele County is not in the interest of the state.

I think the one thing that does give me the most pause was the badge, and I'll be frank about that. That's where I am coming from.

Dianne.

Mr. Oman: So, in my mind, I suppose, if there hadn't been an ill-advised wearing of the badge, maybe this issue wouldn't even been coming up and to me that -- although I can see that there would be some thoughts if someone had a different point of view. I look at Rod too and I think, you know, is -- after his comments, is there a lot of difference between he and Terry or if -- maybe even, in fact, the rest of us that are looking out for things that are -- we are interested in, we have been assigned to this board to watch out for.

If this board does things that I personally feel is not good for the well-being of dentists, because of some personal point of view, then I can see that if I am against that, it not only benefits the dentists but the citizens of the state, then, you know, do I recuse myself just because I have a real strong interest or bias on that? I don't think I would.

So I think, except for the badge, like you say, which was maybe ill-advised at a hearing

like that, and we should maybe be careful about that in the future, I wonder in my own mind too if this is really a problem.

Mr. Nelson: Dianne.

Ms. Nielson: Mr. Chairman, I think the value of this board, and, in fact, all of the boards within DEQ and within the state of Utah that operate in this matter, is the breadth, the diversity, the expertise that's brought. And each of those individuals, and in every case where an elected official serves on the board, I think they bring a valuable perspective to that board in terms of the actions of the division and how they impact the community. I think it provides an opportunity to look at different levels of government in making decisions that best serve the public as a whole and I think it is as valuable a perspective as the industry's perspective or the public citizen perspective, the environmental perspective, the professional perspective.

There have been a number of allegations raised concerning contributions to campaigns. There has been no evidence provided to this board, either in writing or in hearings today, to indicate that there was anything illegal done. And, in fact, the documentation substantiates exactly what is required, that there were reportings of political contributions to campaigns. The Ethics Act specifically recognizes that those sorts of contributions are accepted and, in fact, allowed and not disqualified.

Furthermore -- to the issue of the pin. I suppose some of us choose to wear pins, like the one I am wearing today recognizing September 11th. Some of us put bumper stickers on our cars representing positions we take.

That is an entirely different action than the example that was offered with respect to Ku Klux Klan. Taking a position supporting or saying that -- by button that you support Envirocare is not a position that is trampling on anyone's rights, it's not a position that is risking public health and welfare.

How that relates specifically, that decision, to the approval that was issued, is going to be decided by the board and I think needs to be decided based on the information and the expertise and the perspectives that we all bring.

The Ethics Act and the conflict of interest provisions provide for two actual activities; one is to disclose an interest, and I don't think there is any question at this point that we have had full disclosure of Commissioner Hunsaker's interests. And if there is anything else that he feels that we haven't touched upon that is important for the board to understand, my guess is he'll raise it before we go into the hearings. But I think we have had pretty clear disclosure here.

The second issue, and the one that we are looking at, is whether there is a basis for removing yourself from discussion and/or voting on that activity. And I have heard nothing that I think substantiates a requirement to cause us as a board or individually to -- and certainly as an individual and board member myself -- to cause me to be concerned with Commissioner Hunsaker's ability to act as a member of this board.

Thank you.

Mr. Nelson: Anyone else?

Mr. Julander: I would like one more sentence.

Mr. Nelson: Okay.

Mr. Julander: The whole ethics question in this state in government is abominable and it really ought to be looked at and clarified and then maybe we could make distinctions between one kind of behavior and another.

Mr. Edwards: I call for the question.

Mr. Nelson: Okay. The question has been called. Let's go.

Ms. Langley: Do we want to restate it since it's a negative?

Mr. Nelson: Yeah. Let's make sure we know what we are doing when we say aye or nay. Can we be clear that a yes vote means that Commissioner Hunsaker remains a member of this board for this matter? Okay. And a no vote means that he would be disqualified.

Okay. Rod.

Mr. Julander: Yes.

Mr. Nelson: Okay. Tom.

Mr. Chism: Yes.

Mr. Nelson: Kent.

Mr. Bradford: Yes.
Mr. Nelson: Barbara.
Ms. Reid: Yes.
Mr. Nelson: Dianne.
Ms. Nielson: Yes.
Mr. Nelson: I am going to abstain.
Gary.
Mr. Edwards: Yes.
Mr. Nelson: Cathleen is gone.
Greg.
Mr. Oman: Yes.
Mr. Nelson: Karen.
Ms. Langley: Yes.
Mr. Nelson: Okay. There was -- the vote appears to be one, two, three, four, five, six, seven, eight yeses, one abstention and Cathleen and Rod did not vote.
Mr. Edwards: You mean Terry.
Mr. Nelson: Cathleen and Terry didn't vote.
Mr. Groenewold: Yes, Mr. Chairman. Just a similar request to the one Envirocare made, and I think a lot of it was flushed out in the discussion. If that could be formatted in a similar way to the position that the board took on the petition to intervene.
Mr. Fred Nelson: I will prepare a proposed finding to be presented to the board for the next meeting on that issue too.
Mr. Nelson: I think we have already given some of our thoughts.
Mr. Fred Nelson: I believe I have enough to write something up.
Mr. Nelson: If anybody wants to provide more, I suppose they can.
Okay. If I'm not mistaken, then, that is the end of our business.
Mr. Fred Nelson: Can I just --
Ms. Lockhart: I do have one -- I am Laura Lockhart again and I do have one additional question.
If you could memorialize the dismissal of Sierra Club by order because we are required to respond to their request for agency action in the next few days, so I would prefer not to do that --
Mr. Fred Nelson: I had assumed I would include that in the decisions on the intervention petition.
Ms. Lockhart: Okay.
Mr. Nelson: I assume the board needs to take no action given that they withdrew.
Ms. Lockhart: As long as everybody understands that I don't have to respond to the --
Ms. Nielson: Mr. Chairman, maybe we could ask Cindy if she could clarify that for the record.
Mr. Fred Nelson: I think I did ask her and she specifically did.
Ms. Nielson: Oh, okay.
Mr. Fred Nelson: She specifically said.
Ms. Nielson: Thank you.
Mr. Fred Nelson: Just a caution.
One issue that I wanted to bring up, and that is there has been a number of documents that have been presented to the board on particular issues coming from outside, different spots, places. Caution the board that there are now four parties to this proceeding, the two organizations and the Executive Secretary and Envirocare.
Any information that the board receives should come from those four parties. If you want to submit something on your own, you have the ability to do that, but the process needs to be laid out so it's fair, and it's not fair if everybody doesn't know what everybody is submitting. So it has to come through that process. So if someone wants to support a particular issue, they need to talk to the party that is presenting that particular issue. And I would caution the board not to have discussions with any of the parties, to include the Executive Secretary, on the issues. You are the judge and ex parte communications are not allowed and not appropriate.

Are there any questions on that issue? We'll stick to that process.

Mr. Nelson: Jason, do you have a question?

Mr. Groenewold: Yeah, a point of clarification, if I could.

It was my understanding in the earlier discussion about the officers representing the interests of the petitioners that Citizens Against Radioactive Waste was included in that because they had given us the authority to speak on their behalf. And when we had set up an appeals committee, that was the understanding. And every document that we have filed it's been that way.

And what I am hearing now is their name is not being included and I thought the conclusion we had come to previously was that, in fact, all three organizations would be maintained and that the specific petitioners who were listed as individuals are associated as members to those organizations and, therefore, we would retain those three organizations as the petitioners.

Mr. Fred Nelson: That is not what I understood. My understanding was that there was not an officer here representing that organization and the board runs the risk, when you don't have someone here representing an organization, that someone will later show up and say, wait a minute, those who have been talking are not representing what I have represented. So if they want to be a party, they need to specifically be here with an officer and ask the board to be granted intervention.

Mr. Oman: I remember you saying that, Fred, but then I also remember Mr. Groenewold saying that it needed to be understood that the Citizens Against Nuclear Waste were going to be part of their group and my understanding was that that was our understanding. Now, am I wrong on that?

Mr. Bradford: I thought Dr. Nielson explained it kind of --

Ms. Nielson: Yeah, and I think Fred has just captured my concern, which is that otherwise you move forward and somebody raises an issue later on that leaves that in question.

Mr. Oman: I recall that, but then I recall that he presented the fact that it was going to be understood that was not going to happen because he was representing that group, and so that was my understanding.

Ms. Nielson: Yeah. I think the difficulty is that we don't have anything before us in writing that says that.

Mr. Oman: What if they prepared an affidavit or --

Mr. Groenewold: See, we do that when we file -- filed our original appeal, we had affidavits that included members from those organizations like, for example, Anne Sward-Hansen is listed both as an individual petitioner but then she is also the Executive Director for Citizens Against Radioactive Waste in Utah as an officer.

Mr. Fred Nelson: If she were here today saying, I want to be a party, I would have no problem.

Mr. Groenewold: We could bring an affidavit saying that she gave us the authority to speak on her behalf and the organization's behalf during this proceeding. And, again, that was our attempt to streamline this, was to have, you know, as few speakers as possible so we wouldn't have to keep having the same arguments brought by different folks.

And, you know, it seems to -- you know, when -- a lot of times it's happened in the past on other issues being brought before different boards that you combine petitioners who have similar interests. So they weren't here because they simply assumed that we would be speaking on their behalf. And that was established earlier. I don't think it makes this more cumbersome, but I would have a concern because what I believe that we had set out earlier did include that.

Ms. Langley: Can we clarify that from the tape and make that a -- confirm it? Because we do have it on tape what we decided.

Ms. Nielson: Let me ask -- I guess that's one option.

Maybe the other option is can the board, as we go forward, request, before we actually get into the hearing or a -- maybe other prehearing discussions -- that we receive a document from an officer of Citizens Against Radioactive Waste that specifically designates either that Mr. Groenewold is going to speak on behalf of that organization, so he is their designated spokesman, or indicate which individual is going to appear on behalf of that organization?

Mr. Fred Nelson: That would be fine, but right now the motion on the petition to intervene only approved intervention for the two organizations. I think if you listen to the tape, that's what it did.

Mr. Bradford: We'll have to go through another motion to intervene for the third organization. Is that what you are saying?

Mr. Fred Nelson: Well, they are included on the pleading. I guess the board could pass a motion allowing them to intervene conditional upon then submitting a written document that Mr. Groenewold is representing them.

Mr. Nelson: Okay.

Rod.

Mr. Julander: Jason, what's lost if they don't speak specifically? What's lost?

Mr. Groenewold: That was one of the organizations that was formed --

Mr. Julander: I understand that, but what's lost? What can be presented that you or the other organization can't present?

Ms. Geddes: Can I just say something?

I think these people have spent as much time on this as we have and I think they would feel slighted, to tell you the truth. Their names are on there as a legal document and it concerns me that we would take that off without their permission. I mean, I don't know quite how to --

Mr. Julander: Except they took it off by not coming.

Ms. Geddes: Well, I don't know that they -- you know, there is a portion in there that says the petitioners. We thought of ourselves as -- that we had put on together that we are the petitioners. And we haven't all argued the same issues at the same time. That didn't mean we weren't all on there. When you sign on a document all together, we assume that's what it was. And there is a line in there that says these are the petitioners so -- and I'm sure it wouldn't be any problem getting, you know, an affidavit. I just think that that eliminates a group whose primary issue is this issue and I think it would be a problem.

Mr. Nelson: Diane.

Mr. Holtkamp: Mr. Chairman, there are only so many bites in an apple and we think it would be unfair to start allowing more bites from the same mouth to the apple, so we would object.

Mr. Nelson: Okay.

Mr. Groenewold: Then I can't guarantee that they would not want to come back and then argue standing.

Mr. Nelson: Dianne and then Karen.

Ms. Nielson: I guess my concern isn't -- doesn't go to the issue that Miss Geddes just raised; it goes to the issue that Fred raised about the requirement that one of the ways to appear before the board is to have an officer of the group represent the group or to otherwise have some designation by that organization that an individual is doing that on behalf of the group.

Unless someone else has another affidavit for Anne Sward-Hansen, it seems to me that she has filed it as an individual and she indicates that she is a member of the board, but she doesn't indicate that she has a position as an officer.

Now, she may be the Executive Director, but the concern I have is that this affidavit doesn't state that. And this was the one that was attached to the August filing. And if there is some other document that would document her position as an officer and her intent as an officer of that organization, then I think we could consider that, but I don't see that we have the information before us today.

Ms. Langley: But I would say that we do have it on tape and we do know what we agreed to before we began at the outset so...

Ms. Nielson: We could go back, yeah.

Ms. Langley: I think that would -- so at least what we've perceived we've agreed to when we started the game, all the information and everything else --

Ms. Nielson: Well --

Mr. Fred Nelson: Well, it still remains that the only two groups that have been granted intervention by motion are the two organizations. That original discussion wouldn't change the motion, so you need to deal with that issue.

Ms. Langley: But I think it perhaps does clarify.

Mr. Julander: Do we need to deal with that now, or might we deal with that at the beginning of the next meeting?

Mr. Fred Nelson: Well, the problem is that it may -- it may not be an issue from a schedule standpoint, but right now the responses have to be submitted by a certain date and the record needs to be supplemented by another date and all parties are tied to that date. If you haven't granted intervention, you may push it off.

Mr. Groenewold: And I apologize if there was any confusion, but I was very much under the impression that what we had -- at least what I had committed to was that we were empowered by the officers of Citizens Against Radioactive Waste to speak on their behalf during these proceedings and that's the reason why they did not have an officer come specifically today.

Mr. Julander: Would a motion be in order to grant them standing at this point, to include them? Can we do that?

Mr. Nelson: Fred, what do you think?

Mr. Fred Nelson: Well, if you did that it would have to be subject to them providing documentation that Mr. Groenewold is going to be their officer for purposes of this proceeding.

Mr. Nelson: For the purpose of this -- okay.

Mr. Groenewold: We are just speaking on their behalf. I am not --

Mr. Fred Nelson: Well, the rule says -- and, you know, the board can deviate from that, but the rule says they are supposed to designate an officer to represent a particular organization. And it may sound like some technicalities here, but it's very important to know who is a party to the proceeding and who is raising what issue and who has authority to do what, because if you don't, the board will end up with a confusing mess. So we need to get that decided at the outset.

Mr. Julander: But your suggestion that Jason represent them as -- that doesn't add anything?

Mr. Fred Nelson: I don't make the determination as to whether he is going to represent them. You need to make a decision as to who you are going to grant intervention to.

Mr. Julander: Including the organization and the officer.

Mr. Fred Nelson: Yeah. The rule says that you grant intervention to the organization, but then they have to designate someone to speak for them.

Mr. Julander: And does that need to be determined right now?

Mr. Fred Nelson: No.

Mr. Julander: So just the motion to allow the organization standing would suffice now, and then the officer and the documentation could come later.

Mr. Fred Nelson: That's possible.

Ms. Nielson: What impact would that have in terms of trying to go forward with prehearing conferences and that sort of thing, scheduling?

Mr. Fred Nelson: Well, we need -- you know, they need to immediately decide who was going to be participating for them because the next step in the process is for the parties to try and get together and set a schedule for the hearing. And if they can't set a schedule, they need to come to the board and have the board set a schedule.

Mr. Julander: Let me try a motion.

What's the full name of the organization?

Mr. Groenewold: Citizens Against Radioactive Waste in Utah.

Mr. Julander: Okay. I move that we grant standing to Citizens Against Radioactive Waste in Utah with the proviso that an officer in that organization lets the division know within 48 hours which officer will represent them and provide documentation that they are -- have the authority.

Ms. Nielson: Written documentation.

Mr. Julander: Written documentation.

Mr. Oman: Make it 72 hours.

Mr. Julander: Yeah. This is Friday. Good point.

Mr. Groenewold: We'll hunt you guys down at your homes.

Mr. Julander: Seventy-two hours.

I'll move --

Mr. Groenewold: Yeah, that would be fine.

Mr. Nelson: We have a motion.

Do we have a second?

Mr. Chism: I'll second there.

Mr. Nelson: Seconded by Tom Chism.
 Okay. Do we have any discussion on the motion?
 Mr. Bradford: Just a question on Commissioner Hunsaker.
 Now, should he join us for this vote?
 Mr. Hunsaker: Yea. I vote yea.
 Ms. Nielson: Yes, he should join us.
 Mr. Nelson: He should join us. Come up.
 Mr. Hunsaker: I cast my vote already.
 Mr. Nelson: Okay. Is there any discussion --
 Mr. Hunsaker: Get your damn briefcase off my chair.
 Mr. Julander: Thank you.
 Mr. Nelson: Is there any more discussion?
 Okay, let's take the vote then.
 Teryl Hunsaker.
 Mr. Hunsaker: Aye.
 Mr. Nelson: Rod Julander.
 Mr. Julander: Yes.
 Mr. Nelson: Tom Chism.
 Mr. Chism: Yes.
 Mr. Nelson: Kent Bradford.
 Mr. Bradford: Nay.
 Mr. Nelson: Barbara Reid.
 Ms. Reid: Yes.
 Mr. Nelson: Dianne Nielson.
 Ms. Nielson: Yes.
 Mr. Nelson: I vote no.
 Gary Edwards.
 Mr. Edwards: No.
 Mr. Nelson: Cathleen is not here.
 Greg Oman.
 Mr. Oman: Yea.
 Mr. Nelson: Karen Langley.
 Ms. Langley: No.
 Mr. Nelson: We have one, two, three noes and one, two, three -- let's see. We have four
 noes. One, two, three, four nays and one, two, three, four, five yeses.
 (inaudible) by a vote of five to four to meet the requirements of the motion.
 Okay. That concludes our business, unless there is any member of the public that has a
 dying need to address the board.
 In that case, we have a motion to adjourn. Okay, it's moved.
 All in favor say Aye.
 Board Members: Aye.
 Mr. Nelson: Okay, great.
 (Whereupon, the hearing was concluded.)
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Reporter's Certificate
State of Utah)
) ss.
County of Salt Lake)

I, Dawn M. Davis, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public for the State of Utah, do hereby certify:

That the foregoing proceedings were taken before me at the time and place set forth herein; that the witness was duly sworn to tell the truth, the whole truth and nothing but the truth; and that the proceedings were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That the foregoing pages contain a true and correct transcription of my said shorthand notes so taken.

In witness whereof, I have subscribed my name and affixed my seal this 21st day of January, 2002.

Dawn M. Davis
Notary Public

My commission expires:
April 15, 2004"

VI. URANIUM MILL TAILINGS UPDATE

a Moab Millsite update - Loren Morton (Board information items)

1. Department of Energy public meeting on December 11, 2001 concerning future site remediation and draft preliminary plan for remediation

2. Visit of the National Academy of Sciences, January 14 - 15, 2002 to Moab

3. Dissolution of the Moab Millsite Trust

Loren Morton, DRC staff member updated the Board on the Moab Millsite, and the three items on the agenda. The following is an outline of the activities which have taken place:

Moab Millsite Activities: November 2, 2001 to present

Activity	Description
DOE Draft Remediation Plan	DRC received a copy on 11/23/01 Moab Public Meeting: Tuesday, December 11 @ 7:00 pm in Star Hall
NAS Meeting in Moab <i>(National Research Council's Committee on Long-Term Institutional Management of DOE Legacy Waste Sites: Phase 2)</i>	Scheduled for Monday and Tuesday, January 14, and 15, 2002. Tentative Agenda includes: <ul style="list-style-type: none"> - Monday A.M. = DOE presentations to NAS Committee regarding previous Title I cleanups. - Monday P.M.: NAS Committee site visit. - Tuesday A.M.: <ul style="list-style-type: none"> - Groundwater Panel Discussion - Ecological and Human Health Risk Panel Discussion - Tuesday P.M.: <ul style="list-style-type: none"> - Cost Estimates (DOE presentation?) - Regulatory Issues Panel Discussion (Dianne invited) - Perspectives on Tailings Management Panel Discussion - Tuesday Evening – public meeting
Trust Dissolution	<p>NRC/PWC/DEQ Conference Calls: November 14 & 15, and December 3</p> <p>Atlas Records – are property of the Trust. Beneficiaries have decided to manage them as follows:</p> <ul style="list-style-type: none"> - Technical/Operational Records - to go directly to DOE-GJO - Personnel Records B to go to DEQ, HRM <p>State Escrow Agreement – Attorney General's Office has set up an escrow account at the State Treasurer 's Office.</p> <p>Trust Dissolution Certificate – draft to be submitted by PWC today. Final hopefully be ready in 1 week. After beneficiaries sign final version, trust can be dissolved.</p> <p>Beneficiaries Instruction Letter – to be signed next week with instructions for PWC to complete several items, including:</p> <ul style="list-style-type: none"> - Transfer technical/operational records to DOE-GJO - Transfer personnel records to DEQ/HRM, and - Transfer remaining trust funds to State Escrow Account by 12/17/01 <p>Division of Escrow Monies – escrow account is written so that State Treasurer splits the incoming funds in half and immediately disperses one-half to the NRC. DEQ to enter into a Cooperative Agreement with DOE-GJO to put the remaining Trust funds to work on the site in Moab.</p>

VII. OTHER DEPARTMENT ISSUES

No items

VIII. PUBLIC COMMENT

No further public comment was received.

IX OTHER ISSUES:

a. Next Board Meeting - February 1, 2002 (tentative), Department of Environmental Quality (Bldg #2), Conference Room 101, 168 North 1950 West, Salt Lake City, Utah 2:00 - 4:00 p.m.

The next Board meeting is tentatively scheduled for February 1, 2002. The Executive Secretary will notify the Board members if this meeting will be held or not. If the February meeting is canceled, the next meeting is scheduled for March 1, 2002 at DEQ, Building #2, Conference Room 101, at 168 North 1950 West, here in Salt Lake City. The Board meeting may start one hour earlier at 1:00 p.m.

The meeting adjourned at